



# Backgrounds of Selective Service


VOLUME II • PART 11

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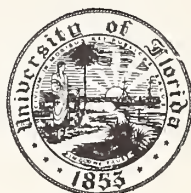
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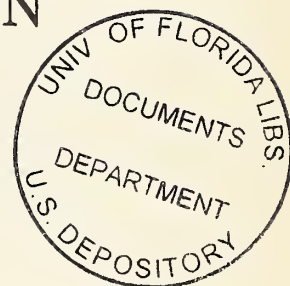
BACKGROUNDS OF SELECTIVE SERVICE

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# Military Obligation:

## THE AMERICAN TRADITION

*A Compilation of the Enactments of Compulsion  
From the Earliest Settlements  
of the Original Thirteen Colonies in 1607  
Through the  
Articles of Confederation 1789*



SPECIAL MONOGRAPH NO. 1

VOLUME II

PART 11. PENNSYLVANIA ENACTMENTS

THE SELECTIVE SERVICE SYSTEM

1947

## CLEARANCE COMMITTEE

BRIG. GEN. CARLTON S. DARGUSCH, *Chairman*

COL. VICTOR J. O'KELLIHER

LT. COL. ARTHUR BOONE

COL. LEWIS F. KOSCH

LT. COL. IRVING HART

COL. WILLIAM HART

MR. KENNETH H. MCGILL

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GOVERNMENT PRINTING OFFICE

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# Pennsylvania

(AND SEE NEW YORK AND DELAWARE)

Year	War	Class I Provisions	Class II Provisions
1605			
1610			
1615			
1620			
1625			
1630			
1635			
1640			
1645			
1650			
1655			
1660			
1665			
1670		(129) 1671	
1675		(127) 1676	
1680			
1685			
1690			
1695			
1700			
1705	1702		
1710	QUEEN ANNE'S		
1715	1713		
1720			
1725			
1730			
1735			
1740			
1745	1744		
1750	KING GEORGE'S		
1755	1754		
1760	FRENCH and INDIAN		
1765	1763		
1770	PONTIAC		
1775	1769		
1780	YANKEE PENNAMITE		
1785	1774		
	LORD DUNMORE'S		
	1775		
	REVOLUTION	(574) 1776	
		(131, 138, 139) 1777	
		(142) 1780	
	1783	(145) 1783	

## Notes

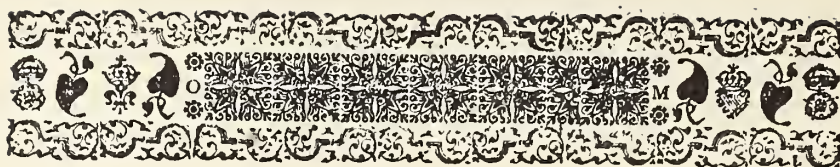
Class I Provisions are defined as general enactments of compulsion laying obligation on citizenry, or for duty in common militia, or both.

Class II Provisions are defined as drafts of members of militia and other organizations, or of citizenry, on specific occasions, or for specific purposes.

Numbers in parentheses identify Statutes reproduced in this Compilation and referred to in the Digest.

## Historical Data

- 1637. Settlement by Swedes.
- 1655. Surrender by Swedes to Dutch.
- 1664. Capture by Duke of York.
- 1681. Charter by King Charles II to William Penn, for Province of Pennsylvania.
- 1681. "Three Lower Counties on the Delaware" transferred to William Penn, by Duke of York.
- 1681. Concessions by William Penn, Proprietary and Governor, to Province of Pennsylvania.
- 1682. Frame of government of Pennsylvania.
- 1683. Frame of government of Pennsylvania and territories annexed.
- 1696. Frame of government of Pennsylvania and territories thereunto belonging.
- 1701. Separate Assembly granted to the "Three Lower Counties" under name of the "Territory."



See in general

# T H E C H A R T E R O F

CHARLES the Second, of *England, Scotland, France, and Ireland*, KING, Defender of the Faith, &c.

Unto WILLIAM PENN, Proprietary and Governor of the Province of *Pennsylvania*.

**C**HARLES, by the Grace of GOD, King of *England, Scotland, France, and Ireland*, Defender of the Faith, &c. To all to whom these Presents shall come, *Greeting*. WHEREAS Our Trusty and Well-beloved Subject WILLIAM PENN, Esq; Son and Heir of Sir WILLIAM PENN deceased, (out of a commendable Desire to enlarge our *English* Empire, and promote such useful Commodities as may be of Benefit to us and our Dominions, as also to reduce the Savage Natives by gentle and just Manners to the Love of Civil Society and Christian Religion) hath humbly besought Leave of Us to transport an ample Colony unto a certain Country herein after described, in the Parts of *America*, not yet cultivated and planted; and hath likewise so humbly besought Our Royal Majesty to Give, Grant, and Confirm all the said Country, with certain Privileges and Jurisdictions, requisite for the good Government and Safety of the said Country and Colony, to him and his Heirs for ever :

## S E C T. I.

KNOW YE THEREFORE, That We (favouring the Petition and good Purpose of the said *William Penn*, and having Regard to the Memory and Merits of his late Father in divers Services, and particularly to his Conduct, Courage, and Discretion under our Dearest Brother *JAME* Duke of *York*, in that signal Battle and Victory fought and obtained against the *Dutch* Fleet, commanded by the Heer *Van Opdam*, in the Year 1665: In Consideration thereof, of Our special Grace, certain Knowledge, and meer Motion) have Given and Granted, and by this Our present Charter, for Us, Our Heirs and Successors, do Give and Grant unto the said *William Penn*, his Heirs and Assigns, all that Tract or Part of Land in *America*, with the

A

Islands

Islands therein contained, as the same is bounded on the East by *Delaware* River, from Twelve Miles Distance Northwards of *Newcastle* Town unto the Three and Fortieth Degree of Northern Latitude, if the said River doth extend so far Northward: But if the said River shall not extend so far Northward, then by the said River so far as it doth extend, and from the Head of the said River the Eastern Bounds are to be determined by a Meridian Line, to be drawn from the Head of the said River, unto the said Forty-third Degree. The said Land to extend Westward Five Degrees in Longitude, to be computed from the said Eastern Bounds; and the said Lands to be bounded on the North by the Beginning of the Three and Fortieth Degree of Northern Latitude, and on the South by a Circle drawn at Twelve Miles Distance from *Newcastle* Northward, and Westward unto the Beginning of the Fortieth Degree of Northern Latitude, and then by a straight Line Westwards to the Limits of Longitude above mentioned.

S E C T. II.

WE do also Give and Grant unto the said *William Penn*, his Heirs and Assigns, the free and undisturbed Use and Continuance in, and Passage unto, and out of all and singular Ports, Harbours, Bays, Waters, Rivers, Isles, and Inlets, belonging unto, or leading to and from the Country or Islands aforesaid, and all the Soils, Lands, Fields, Woods, Underwoods, Mountains, Hills, Fenns, Isles, Lakes, Rivers, Waters, Rivulets, Bays, and Inlets, situated or being within, or belonging to the Limits or Bounds aforesaid, together with the Fishing of all Sorts of Fish, Whales, Sturgeon, and all Royal and other Fishes, in the Seas, Bays, Inlets, Waters, or Rivers within the Premises, and all the Fish therein taken; and also all Veins, Mines, Minerals, and Quarries, as well discovered as not discovered, of Gold, Silver, Gemmes, and precious Stones, and all other whatsoever, be it Stones, Metals, or of any other Thing or Matter whatsoever, found or to be found within the Country, Isles, or Limits aforesaid.

S E C T. III.

AND him, the said *William Penn*, his Heirs and Assigns, We do by this Our Royal Charter, for Us, Our Heirs and Successors, Make, Create, and Constitute the True and Absolute Proprietary of the Country aforesaid, and of all other the Premises: Saying always to Us, Our Heirs and Successors, the Faith and Allegiance of the said *William Penn*, his Heirs and Assigns, and of all other Proprietaries, Tenants, and Inhabitants, that are or shall be within the Territories and Precincts aforesaid; and saving also, unto Us, Our Heirs and Successors, the Sovereignty of the aforesaid Country, to have, hold, possess, and enjoy the said Tract of Land, Country, Isles, Inlets, and other the Premises, unto the said *William Penn*, his Heirs and Assigns, to the only proper Use and Behoof of the said *William Penn*, his Heirs and Assigns, for ever, to be holden of Us, Our Heirs and Successors, Kings of *England*, as of Our Castle of *Windfor* in Our County of *Berks*, in fee and common Soccage, by Fealty only for all Services, and not in Capite or by Knights Service: Yielding and paying therefore to Us, Our Heirs and Successors, Two Beaver Skins, to be delivered at Our Castle of *Windfor* on the First Day of *January* in every Year; and also the Fifth Part of all Gold and Silver Oar, which shall from Time to Time happen to be found within the Limits aforesaid, clear of all Charges. And of Our further Grace, certain Knowledge, and meer Motion, We have thought fit to erect, and We do hereby erect the aforesaid Country and Islands into a Province and Seigniorie, and do call it *P E N S I L V A N I A*, and so from henceforth will have it called.

S E C T.



Clerks of Our Privy Council for the Time being, or one of them, and shall be ready to appear in any of Our Courts at *Westminster*, to answer for any Misdemeanor that shall be committed, or by any wilful Default or Neglect permitted by the said *William Penn*, his Heirs or Assigns, against the Laws of Trade and Navigation; and after it shall be ascertained in any of Our said Courts, what Damages We or Our Heirs or Successors shall have sustained by such Default or Neglect, the said *William Penn*, his Heirs or Assigns shall pay the same within One Year after such Taxation, and Demand thereof, from such Attorney; or in case there shall be no such Attorney by the Space of One Year, or such Attorney shall not make Payment of such Damages within the Space of a Year, and answer such other Forfeitures and Penalties within the said Time, as by the Acts of Parliament in *England* are and shall be provided, according to the true Intent and Meaning of these Presents; then it shall be lawful for Us, Our Heirs and Successors, to seize and resume the Government of the said Province or Country, and the same to retain until Payment shall be made thereof: But notwithstanding any such Seizure or Resumption of the Government, nothing concerning the Propriety or Ownership of any Lands, Tenements, or other Hereditaments, or Goods or Chattles, of any of the Adventurers, Planters, or Owners, other than the respective Offenders there, shall in any ways be affected or molested thereby.

S E C T. XV.

PROVIDED always, and Our Will and Pleasure is, That neither the said *William Penn*, nor his Heirs, or any other the Inhabitants of the said Province, shall at any Time hereafter have or maintain any Correspondence with any other King, Prince, or State, or with any of their Subjects, who shall then be in War against Us, Our Heirs and Successors; nor shall the said *William Penn*, or his Heirs, or any other Inhabitants of the said Province, make War or do any Act of Hostility against any other King, Prince, or State, or any of their Subjects, who shall then be in League or Amity with Us, Our Heirs and Successors.

S E C T. XVI.

AND, because in so remote a Country, and situate near many Barbarous Nations, the IncurSIONS as well of the Savages themselves, as of other Enemies, Pirates and Robbers, may probably be feared; Therefore We have given, and for Us, Our Heirs and Successors, do give Power by these Presents to the said *William Penn*, his Heirs and Assigns, by themselves or their Captains or other their Officers, to Levy, Muster and Train all Sorts of Men, of what Condition soever, or wheresoever born, in the said Province of *Pennsylvania* for the Time being, and to make War, and to pursue the Enemies and Robbers aforesaid, as well by Sea as by Land, even without the Limits of the said Province, and by God's Assistance to vanquish and take them, and being taken to put them to Death by the Law of War, or to save them at their Pleasure, and to do all and every other Thing which unto the Charge and Office of a Captain-General of an Army belongeth or hath accustomed to belong, as fully and freely as any Captain-General of an Army hath ever had the same.

S E C T. XVII.

AND FURTHERMORE, of Our special Grace and of Our certain Knowledge and meer Motion, We have given and granted, and by these Presents, for Us, Our Heirs and Successors, do give and grant unto the said *William Penn*, his Heirs and Assigns, full and absolute Power,  
Licence

for their Lands, Tenements, Goods or Chattels within the said Province, or in and upon any Goods and Merchandizes within the Province, or to be laden or unladen within the Ports or Harbours of the said Province, unless the same be, with the Consent of the Proprietary, or chief Governor, or Assembly, or by Act of Parliament in *England*.

S E C T. XXI.

A N D Our Pleasure is, and for Us, Our Heirs and Successors, We charge and command, That this Our Declaration shall from henceforth from Time to Time be received and allowed in all Our Courts, and before all the Judges of Us, Our Heirs and Successors, for a sufficient lawful Discharge, Payment and Acquittance; commanding all the Officers and Ministers of Us, Our Heirs and Successors, and enjoining them upon Pain of Our highest Displeasure, that they do not presume at any Time to attempt any thing to the contrary of the Premises, or that do in any sort withstand the same, but that they be at all Times aiding and assisting, as is fitting, to the said *William Penn*, and his Heirs, and unto the Inhabitants and Merchants of the Province aforesaid, their Servants, Ministers, Factors, and Assigns, in the full Use and Fruition of the Benefit of this Our Charter.

S E C T. XXII.

A N D Our farther Pleasure is, and We do hereby, for Us, Our Heirs and Successors, charge and require, That if any of the Inhabitants of the said Province, to the Number of Twenty, shall at any Time hereafter be desirous, and shall by any Writing, or by any Person deputed by them, signify such their Desire to the Bishop of *London* for the Time being, That any Preacher or Preachers, to be approved of by the said Bishop, may be sent unto them for their Instruction; That then such Preacher or Preachers shall and may Reside within the said Province, without any Denial or Molestation whatsoever.

S E C T. XXIII.

A N D if perchance hereafter any Doubt or Question should arise, concerning the true Sense and Meaning of any Word, Clause, or Sentence contained in this Our present Charter, We will, ordain, and command, That at all Times and in all Things, such Interpretation be made thereof, and allowed in any of Our Courts whatsoever, as shall be adjudged most advantageous and favourable unto the said *William Penn*, his Heirs and Assigns: Provided always no Interpretation be admitted thereof by which the Allegiance due unto Us, Our Heirs and Successors, may suffer any Prejudice or Diminution; although express Mention be not made in these Presents of the true yearly Value, or Certainty of the Premises, or any Part thereof, or of other Gifts and Grants made by Us and Our Progenitors or Predecessors unto the said *William Penn*: Any Statute, Act, Ordinance, Provision, Proclamation, or Restraint heretofore had, made, published, ordained or provided, or any other Thing, Cause or Matter whatsoever, to the contrary thereof in any wise notwithstanding. IN WITNESS whereof We have caused these Our Letters to be made Patent: Witness O U R S E L F; at *Westminster*, the Fourth Day of March, in the Three and thirtieth Year of Our Reign, *Annoque Domini One Thousand Six Hundred and Eighty-one*.

*By Writ of Privy Seal,*

P I G O T T.

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The

Ordinances for the government of the Delaware were promulgated by the Governor and Council at New York,<sup>1</sup> from time to time as circumstances required.

The more important of these are subjoined in chronological order.

*Ordinances, June 14th, 1671.*

1. That a block-house be erected in the town of New Castle for the common defense.

2. That no vessel shall be permitted to go up the river above New Castle, to traffick.<sup>2</sup>

3. That no person in Delaware shall be permitted to distill liquors, but such as give in their names to the officers at New Castle from whom they shall have license so to do, and also that such Distillers shall pay or cause to be paid one guilder per can for all strong liquors that they shall distill, the which shall go toward the reparation of the New Block-house or fort, or some other public work.

4. That the number of Victuallers or Tappers of strong drink be ascertained; that is to say three only for the town and some few up the river, who the officers shall think fit to approve of, and no more than will be found convenient; who may have license to do the same, whereby disorders will be prevented and travellers have better accommodation.

5. That constables may be appointed to keep the Kings peace, who shall have staves with the Kings Arms upon them as practiced in the rest of his Royal Highness' dominions.

6. That they may have the Kings Arms to be set up in their Courts of Judicature, as well as on the staves, the which they will be at the charge of themselves.

7. That the Governor doth allow of all such (land) grants as the officers at Delaware have already passed, and doth order that those now presented by Captain Carre and Mr. Wharton have patents of confirmation, upon the same terms and conditions as the rest of the planters in Delaware river, under his Royal Highness' protection do enjoy their land; with this condition that each planter shall be obliged to settle upon the land for which they have patents in some convenient time to be appointed for the same; and likewise that they maintain a house lot in the town, or towns intended to be erected for their mutual defence, to the which they shall be nearest related.

And for the future, it is expected, before any grant be absolutely made there by the officers that the desire of all such persons who are willing to take up land, together with the quantity thereof be first transmitted to the Governor here, who as he shall so cause will issue forth an order to the Surveyor there to make a survey thereof, the which being certified they may have patents of confirmation for the same. In the meantime the officers are to give encouragement to any such persons, who shall make application unto them for land, who may withal be acquainted with this order.

8. That those orders made at the time of the trial of the Long Finne<sup>3</sup> at New Castle do stand good, and the officers there are to cause them to be put in execution. But withal they are to return hither a duplicate thereof, whereby it may the better be adjudged how long time they may be practicable.

<sup>1</sup> Vide Pa. Arch., Vol. VII. <sup>2</sup> This prohibition removed Jan. 27, 1672. <sup>3</sup> Vide *infra*.



9. About clearing the way between New Castle and Mr. Augustine Herman's plantation,—if those of Maryland are willing to do their part,—the officers at New Castle are hereby empowered to enjoin the inhabitants at Delaware likewise to clear their proportion.

10. That a person shall be appointed and sworn at the town of New Castle to be Corn Meter, who may not only see the corn duly measured, but prevent sending thereof abroad for fowl, by ordering it to be well cleansed; and also that the said officers have an inspection and do view their beef and pork that it may be well packed and merchantable.

11. Concerning the Mill as also one pair of Millstones not used, but lying in the mud or water, it is ordered that care be taken for the letting out of the said mill for the best advantage, to some persons who will undertake the same, and that the profit thereof be reserved for the public; and for the millstones not used, they are to be taken up and preserved till further orders.

12. Respecting the prohibition that no quantities of liquors shall be sold to the Indians under a quarter of an ancker, half, or a whole ancker, it is left to the discretion of the officers there to do therein as shall be thought most convenient.

13. That it is left to the care of the Captain Carre and the rest of the officers in New Castle to see that the materials in the fort be preserved in the best manner they shall think fit, who have likewise liberty to dispose of such of them toward the erecting of the new fort, or block house as there shall be occasion.

14. Respecting the tenure of the land at Delaware, it is to be held in free and common socage, as his Royal Highness by his Majesty's patent holds all his territories in America, that is to say, according to the custom of the Manor of East Greenwich, only with this proviso, that they likewise pay the quit rents, reserved in their several patents as an acknowledgement to his Royal Highness.

About this time, the white inhabitants on the Delaware began to have serious trouble with the Indians, who had lately committed some horrible murders, and threatened others. It therefore became necessary for Governor Lovelace to take such steps toward the chastisement of the Indians as would prevent the recurrence of these outrages in the future.

As a preliminary step, the inhabitants were ordered "to retire into towns for their better safety and security," as soon as convenient. The coöperation of the Governor of the province of New Jersey was asked in this undertaking, and by agreement between Governor Lovelace and Governor Carteret, of New Jersey, a Council was held in Elizabeth Town, in that province, on the 7th of November, 1671, at which it was "resolved and concluded," that the then season of the year, for various good reasons, was not a fitting time to begin a war with the Indians, who would likely take part with the murderers, but that the officers on the Delaware should take such steps as would lead to the arrest, conviction, and punishment of the murderers, and in the meantime, cause the inhabitants to conform, as nearly as possible, to what had been resolved by the mutual Council in the following<sup>1</sup>

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<sup>1</sup> Vide Pa. Arch., Vol. VII.

*Ordinances for Defence.*

Ordered, That the inhabitants at New Castle and parts adjacent upon Delaware river be digested into several companies as the towns and number of men will permit; and upon return of the names of the officers that shall be chosen amongst them to have the command of such companies, they shall have commissions for their respective employments under his Majesty's obedience. In the meantime, those officers that shall be chosen are to act and proceed with allowance until they are confirmed.

That every person that can bear arms from 16 to 60 years of age, be always provided with a convenient proportion of powder and bullet fit for service, and their mutual defence, upon a penalty for their neglect herein to be imposed by the commissioned officers in command, according to law.

That the quantity or proportion of powder and shot to be adjudged competent for each person be at least one pound of powder and two pounds of bullet; and if the inhabitants of the river shall not be found sufficiently provided with arms, his Royal Highness' Governor is willing to furnish them out of the magazine or stores, they being accountable and paying for what they shall receive, to the Governor or his order.

That the places, where the "Towne-ships" upon the river shall be kept, be appointed and agreed upon by the Schout, Commissaries and the rest of the officers there, according to their proposal sent, as also where the block-houses and places of defence shall be erected, as well in the Town as in the River.

That all former prohibitions of selling powder and ammunition to the Indians, under what penalty soever be suspended or left to the discretion of the officers, as they shall see occasion until further orders.

That no corn or provisions be transported out of Delaware unless that which is already on board or intended to be shipped in the Sloop of Thomas Lewis (now in that river) for the which he shall have a special license or permit, until further order.

That the officers and Magistrates at Delaware be hereby empowered and authorized to treat with the neighbors Indians, of the Susquehanas or others join together against the murderers and such as shall harbor them, or take their part, if occasion shall require and promise them such reward as they shall think fit. Provided that it be done with great privacy and caution, so that no sudden jealousy be given to the persons intended to be prosecuted or their confederates.

That the afore-recited officers and magistrates upon all emergent occasions do take care by all means, that shall present, as well by expresses, to give an account hither of what from time to time shall happen there in relation to this matter, which said expresses and messengers shall be well and duly satisfied for their pains and troubles.

At a Council held in New York, on the 17th of May, 1672, the following additional orders relative to the government on the Delaware, were promulgated.<sup>1</sup>

That for the better government of the town of New Castle for the future, the said town shall be erected into a corporation by the name of a bailawick, that is to say, it shall be governed by a Bailiff and six assistants, to be at first nominated by the Governor, and at the expiration of a year, four of the six to out, and four others to be chosen in their places,

<sup>1</sup> *Vide* Pa. Arch., Vol. VII.

of the Peace or any Constable with two Overseers where no Justice is at hand Have power to press Men Horses, Boats, or Pinnaees, at the Publique Charge, to pursue such Persons, both by Sea and Land and to bring them back by force of Armes, to Clear themselves of such Crimes or Suspition thereof.

Payment for service.

No man shall refuse for Service or worke done, his Payment in Corne at the usual Rate, Provided that the Corne be Merchantable, Provided also that no Speciall agreement was before hand made for any perticuler payment if so then to be paid in the same Speeie agreed upon or Consideration for default thereof by Arbustration.

Abuse and cruel treatment of servants.

If any Masters or Dames shall Tyrannically and Cruelly abuse their Servants, upon Complaint made by the Servant to the Constable and Overseers, they shall take speedy redress therein, by Admonishing the Master or Dame not to provoke their Servants, And upon the Servants Second Complaint, of the like usage It shall be Lawful for the Constable and Overseers to protect and Sustaine such Servants in their Houses till due Order be taken for their Reliefe in the ensuing Sessions Provided that due Notice thereof be Speedily given to Such Masters or Dames, and the Cause why such Servants are Protected and Sustained, and in Case any Master or Dame by such Tyranny and Cruelty, and not Casually, shall smite out the Eye or Tooth of any such man or maid Servant, or shall otherwise Maime or disfigure them such Servants after due proof made shall be sett free from their Service, And have a further allowance and recompence as the Court of Sessions shall judge meet.

Causeless complaints.

But in Case any Servant or Servants shall causelessly Complain against their Master or Dame If they cannot make prooffe of a just ocaation for such Complaints such Servants shall by the Justices of the Court of Sessions be enjoyned to serve three Months time extraordinary (Gratis) for every such vndue Complaint.

Assignments to other masters.

No Servant, except such are duly so for life, shall be Assigned over to other Masters or Dames by themselves their Executors or Administrators for above the Space of one year, unless for good reasons offered; the Court of Sessions shall otherwise think fitt to order, In such Case the Assignment shall stand good Otherwise to be void in Law.

Seven years' faithful service, to be rewarded.

All Servants who have served Diligently; and faithfully to the benifit of their Masters or Dames five or Seaven yeares, shall not be Sent empty away, and if any have proved unfaithful or negligent in their Service, notwithstanding the good usage of their Masters, They shall not be dismiss, till they have made satisfaction according to the Judgment of the Constable and Overseers of the parish where they dwell.

Negligent servants to make satisfaction.

#### Military affaires.

Laws relating to militia, to be observed.

For as much as the good Management of the Militia is the Support of all Goverments in Peace and Safety, to which all Persons of what quality soever are obliged in duty & Conscience in their proportions to be Aiding and Assisting to this good end these following Lawes are to be observed.



1 First, that every Male Person above the age of sixteen years Except, Justices, Sherreffes, high Constables and under Sherriffe Petty Constable Ministers and professed School-masters, Physicians and Chirurgeons, allowed of by two Justices, Clarkes of Assizes or Sessions Publique Notaries, Masters of Shippes or vessels above Twenty Tunns Constant heardsmen or such as for bodily Infirmitie or old age shall be be exeused by the Justices in any Sessions, as also one servant of each Justice or high Sheriff shall duely attend all Military Exercises and Service as Trayning watching and warding, when they are thereunto required and warned by their Officers under the penalty of five shillings for every Dayes default.

Male citizens above age of sixteen, to attend military exercises.

2 Every Town shall be provided of a Suffieient ware house and a Safe convenient place thereunto Adjoyning for keeping Powder and Ammunition; under the penalty of ten Pounds and the Constable and Overseers shall provide and maintain for a General Stock to the use of the Town in Case of necessity, one Barrell of good Pouder, English weight one hundred and fifty Pounds of Muskett or Pistell Bullets Thirty Pounds of good Match; which they shall carefully renew from yeare to yeare, or time to time as shall be needful under the Penalty of five pounds, for The want of such proportions of Bullets, Pouder, or Match as beforementioned; And where there are Artillery forts or Batteryes in any Town, The Constable and Overseers shall Mount such Guns, and fitt them with Appurtenances for Service, and the Constable and Overseers are hereby Authorized to Assess Levy or destrain upon the Inhabitants for building providing doing and maintaining the particulars before recited.

Towns to be provided with powder magazines.

And ammunition.

Forts to be maintained.

3 Besides the Generall stock of each Town Every Male within this Government from Sixteen to Sixty years of age, or not freed by public Allowance, shall if freeholders at their own, if sons or Servants at their Parents and Masters Charge and Cost, be furnished from time to time and so Continue well furnished with Armes and other Suitable provision hereafter mentioned: under the penalty of five Shillings for the least default therein Namely a good Serviceable Gun, allowed Suffieient by his Military Officer to be kept in Constant fitness for present Service, with a good sword bandeleers or horne a worrne a Seowerer a priming wire Shott Badge and Charger one pound of good powder, four pounds of Pistol bullets or twenty four bullets fitted to the gunne, four fathom of Serviceable Match for match lock gunn four good flints fitted for a fire lock gunn, And all Captains or Military, Officers are hereby required to give in or send an Aecompt yearly, to the Governour and Councell how the Inhabitants are furnished and provided, That due Supply may be Ordered.

Male inhabitants, to be furnished with arms and accoutrements.

Account to be furnished governor and council.

4. That the Constable and Overseers shall in behalf of their Town present to the Governour three names of the most fitt persons in their Towne to be Captaine Lieutenant and Ensigne to whome the Governour shall Issue forth Commissions accordingly, unlesse hee have Suffieient Execeptions against either of them In which case the Constable and Over-

Captains, lieutenants, and ensigns, to be commissioned.

seers, shall proceed to a new Election, which is to bee by the plurality of voyces of the Soldiers.

Penalty for refusing to accept military office.

5 No man Elected into any Military Office, shall refuse to accept thereof, or discharge his trust therein under the penalty of five pounds whereof one half to be paid to the Governour and the other halfe to him that is chosen in his place, and accepts thereof.

Inspections.

6 The Captaine or Chiefe Military Officer in each Towne is impoured once in three Months at least every yeare or oftner if they see good, to take a Strickt view, how every man is furnished with Armes and Ammunition according to Law and where any are found faulty They are required to to make presentments thereof to the Constable and Overseers of the said Towne, That the fines and penalties may by them from tyme to tyme be duely Levied, and if this view of Armes and Ammunition, shall at any time be neglected or the defects not duly presented, The Captaine or Chiefe Military Officer shall pay forty Shillings for his Neglect, which fine shall be Levied by the Constable and applied to the maintenance of the Publique Stock of the Towne.

How fines to be imposed.

7 All fines for the Neglect of Townes or Captains and Chief Officers in Military affairs, shall be imposed by the Court of Sessions only and not otherwise, but for the neglect of particular persons by the Constable & Overseers.

Training days.

8 Every Town within this Government shall have every year four Days of Trayning amongst themselves and their shall be also in each Ryding once in the yeare a General Trayning of all the Townes within that Jurisdiction which may take up three dayes time, the one in Coming to the place appointed, the next for the Trayning, and the third for every one to Returne to their Habitations.

General trainings.

{ 8 There shall be likewise once in two years a General Trayning for all Souldiers within this Government The time and place to be at the Nomination of the Governor.

Instructions on training days.

In the Sevrall Traynings All Males above sixteen Years of age who are not freed from that Service, are to be taught and Instructed in the Comely handling and ready use of their Armes, in all postures of Warre to understand and attend all words of Command, And further To fitt all Such as are or shall be in Some measure instructed for all Military Service, against therebe occasion under the penalty of forty Shillings to be Leveyed upon the Military Officers, as upon Examination they shall be found more or less faulty and with respect to their place the greater trust paying the Greatest fine for neglect And the dayes to be appointed for private and Generall Traynings shall be at the most Convenient times of the Year for Traynings, but not within fourteen dayes one of another, Moreover every such Trayning Day the Major Generall or Chief Military Officer present shall cause the names of all the Souldiers to be read in the forenoone and in the afternoone also if hee see Cause And whosoever in any Trayning day shall be totally absent, shall pay five Shillings for every such default, whoever shall at any time of the day withdraw himself from the Service without leave from the Chiefe Military Officer present hee shall pay either

Appointment of such days.

Roll-call.

Punishment for absence, tardiness, &c.

as for total absence, or a greater or less fine as the Offence considered in all Circumstances may require And whosoever shall come late, shall pay for each such default one Shilling & for any other disorderly offensive Carriage according to the Nature and measure of it Nor shall any Town suffer their Inhabitants to Neglect or grow Slight in a Service of such importance And what fines shall be levied by virtue of any neglect or Misdemeanor at the General Trayning of such Jurisdiction The Major General shall have the one third and the other Officers two thirds.

9 All fines arising upon this accompt, and not exprest here, they shall be disposed of are to be Employed in the Buying Drumes, Colours, Halberds and other necessary Charges relating to the Militia. Disposition of fines.

10 The Governor and Councill shall send warrants to the Major General, the Major General to the Captaines and Chief Officers, to draw their Severall Companies to a Certain place mentioned in the said warrants, allowing fourteen Dayes warnings in time of peace, But if at any time there shall happen within this Government any Forraigne Invation or any Publique attempt or annoyance from a Common Enemy, whether Christian or Pagan or other Insurrection or Rebellion against the Lawfull Authority In such Case the Governor by warrant to the Major Generall the Major Generall to the Sheriffe, the Sheriff to all Officers both Civill and Military shall Immediately dispatch Order Warrants or pre-septs to all other Persons whatsoever, that upon their utmost perills of fine and Imprisonment, by the Governor & Council they nor any of them do fail to meet upon a Certaine day and place in the warrant to be expressed with their Armes and other Military provitions, where the Sheriffe in person is also to appear and attend there to receive further Order from the Governor and Council. Rendezvousing of militia.

19\* All inferiour Military Officers shall punctually obey the Orders of their Superiors in their Marches Quarters, and watches without murmuring and repining under the penalty of being fined at the Discretion of the Major General and Captains, from whose Sentence no appeal shall bee made to any Inferiour Court, nor abatemented granted, except by the Governor & Council. Orders of superiors, to be obeyed.

12 The three Chiefe Officers of each Company have power to punish any Souldier or Souldiers that shall commit disorder or Contempt upon any day or time of Military Exercise within their Towne or upon any watch or ward, by Stocks Riding wooden Horse or other Military punishments or by fine not exceeding ten Shillings or may Commit such offenders to the Constable, to bee carried before some Justice of the peace who may bind him over to the next Court of Sessions, or Commit him to prison if the Cause so require. Punishments for contempt.

13 Offences of Contempt or disorder at any General Trayning shall bee heard and Adjudged by the Major General and the Captaines onely, who have power to double the fine or Treble the punishment upon the Offenders, though not to al- Hearing and adjudging of contempts.

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\* Match Locks accepted against, omitted which was the 11.



ter the manner which is directed to the Chiefe Military Officers in Towne Traynings.

Furnishing arms and ammunition to persons unable to procure same.

14 If any Person cannot procure Armes or Ammunition with such pay or meances as hee hath, If hee bring to the Capitaine so much Corne as by the apprizement of the said Capitaine and two other Indifferent men whereof one to bee Chosen by the party, shall bee adjudged of greater value by a fifth part, then such Armes and Ammunition is of hee shall bee excused of the penalty for want of Armes untill hee bee provided, and the Capitaine shall Endeavoure to furnish him so soone as may bee by Sale of such goods so deposited, rendering the Overplus to the party, But if any person shall not bee able to provide himself Armes and Ammunition though meere poverty, if hee be Single he shall bee put to Service by the Constable and Overseers of the place where he dwell-eth, or they shall provide him Armes and Ammunition and shall appoint him when and with whom to worke it out.

Workmen to repair arms.

15 Vpon any Expedition upon occasion of and Enemy or any present Military Service to be done, All Smiths and other needful workmen shall immediately repaire such Armes and other Necessaries as shall be brought to them for that end, for which they shall not refuse such pay as the Country affords, upon the penalty of five pounds for every Such default, and for any Such neglect at any time, other time more then ten dayes, shall forfeit for every such Offence ten Shillings.

Penalties for neglect.

Bearing arms beyond government limits, not to be compelled.

16 No man shall be Compeld to bear Armes or wage war by sea or Land, without the bounds and limits of this Government, But from Defensive warrs noc man shall be exempted.

Wars upon Indians, how to be maintained.

17 All defensive or vindictive Warrs upon Indyans shall be maintained by a Generall Assesment proportioned on each Towne according to the pay and Custome of England to Soldiers and half pay to Officers.

Raising armies to assist neighboring colonies.

18 In respect of the mutuall, and Brotherly Assistance which wee ought at all times to Cherish and improve, for the helpe and Support of our English Neighbours in other his Majestyes Colonyes The Governour and Counsel may at all tymes and in all places, by beat of Drum or otherwise, Call together list, raise Armes and send forth out of this Government all such, or so many men as shall voluntarily present themselves to the Service whether Servants or free-men, with this distinction onely, that if any Servant making use of that pretext, to Escape from his Master, shall flee and absent himselfe from his Colours, and not returne, if Living with his Officers; such Servant so Offending, shall be Lyable To bee punished by Death, according to the dissipline of warre and the master of such Servants shall have reasonable satisfaction allowed him by the Governour for such Damage And to all Voluntary Souldiers so Levied, shall be Allowed one Moneths pay and made good by a General Assesment proportioned to each Towne, all further charges are to bee defrayed by the Colony to whose Assistance they are Employed, And all Justices of Peace Sheriffs high Constables and other Officers are impowered and required to Suppress and hinder all Levyes of Souldiers by beat of Drume or other-

wise to be composed, But such as shall be Authorized by his Majesties immediate warrants, or the Governor and Council here Established.

20 All souldiers shall bee respective to their Officers and Obedient to their Command in their Marchings Quarterings and watchings as well as Traynings, whilst they are required to attend the Service, under the penalty (for their Disobediance in ordinary occations) of five shillings but in Case of such Disobediance happens before the face of an Enemy; or when it is reasonably expected that an Enemy is at hand, to make an assault in such Cases the Officer or Officers shall commit such person or persons into Custody and at Convenient time either to Sentence the Offender to some grievous punishment by a Court Marshall, or remitt the Tryal thereof to the Court of Assizes who are empowered to hear, Examine and Determine the Cause and what fine or penalty that Court shall thinke to impose upon the offender.

Soldiers to obey their officers.

Punishment for disobedience.

21 If any man appointed to stand Centinel, shall bee found sleeping during that duty, whereby the lives of others are in Danger, hee shall pay forty Shillings or suffer other Military Punishment, but if hee shall come off from being Centinel without being relieved hee shall forfeit five pounds.

Punishment of sentinels for sleeping at their posts.

22 Every man that absents himselfe from the watch without leave from his Officers, shall pay five Shillings, and with leave shall hire another; in his place, But if any man shall depart from the watch without leave of his Officers he shall forfeit ten Shillings or more, with other paines and penalties, according to the measure of the Danger that may ensue thereupon.

Absenoe without leave.

23 That no Troope of Horse shall exceed the Number of fifty Troopers besides officers (viz) A Captaine, a Lieutenant, A Cornet, a Quarter Master, three Corporals, which Officers and the private Troopers are to observe the same times for Muster and Exercise in Military discipline with all other Circumstances enjoyned upon the foot Officers and Souldiers respectively, Mutatis Mutandis as followeth.

Cavalry companies, of what to consist.

Observance of times to muster, &c.

24 Every Trooper listed in any Troope of Horse shall keepe and maintaine a good Horse Fitted with Sadle, bridle, Holsters, Pistolls, or Carbine, and a good Sword under the penalty of ten Shillings for the least default.

Outfit of a trooper.

Neither is it lawful for any Trooper to sell or Change his Horse without his Captaine's concent under y<sup>e</sup> penalty of five pounds.

Penalty for selling horse without leave.

And for non appearance upon dayes of Muster and Exercise ten Shillings a day.

For non-appearance on muster days.

Neither is it Lawfull for any listed Trooper to disband himself, but with leave from his Captaine under the penalty of fifty Shillings.

For departing without permission.

All Officers both of Horse and foote shall from time to time Obey their Superiour Officers in all things Relating to the Military affaires of this Government.

Officers to obey their superiors.

All other Penalties for defaults in other Officers or Souldiers of a Troope of Horse, shall bee the same and Levied in the same manner, and applied to such uses as are else

Other penalties, how to be levied and applied.



where directed and Ordained in Relation to the foote Officers and Souldiers.

#### Officers and Offices.

Terms of sheriffs and constables.

All Sheriffs under Sheriffs or High Constables and Constables shall be Changed every yeare, only the under Sheriffs or high Constables, by Speciall warrant may continue in their Office.

And of justices of the peace.

Justices of the Peacc are to continue in their Places duren- ing the Governours pleasure.

Clerks of courts, criers and mar- shalls.

Clarks of Courts Cryers, and Marshalls, are to continue in their places duren- ing their good behaviour for breach of which they are punishable by the Loss of their places, and fine at the Discretion of the Court.

Removal from of- fice, and supply- ing of vacancies.

That the Governour and Council may by Special warrant displace any Officer made or Chosen within this Government for Neglecting of his Office or other Notorious misdemeanor ; and misbehaviour, In which Case the Counstable and Over- seers of any Towne shall proceed to a new Election, to Sup- ply the vacancy as if the said Officer were Dead, According to the Rules prescribed for Election of Town Officers.

#### Overseers.

Overseers, num- ber, qualifica- tions, election and terms of.

Overseers shall be eight in Number, men of good fame and life, Chosen by the plurality of voyces of the freeholders in each Town, whereof foure shall remain in their Office two years Successively, and four shall be Changed for New ones every yeare, which Election shall preceed the Elections of Constables, in point of time, In regard the Constable for the yeare ensuing, is to be chosen out that Number which are dismist from their Office of Overseers.

To be confirmed.

The New Chosen Overseers are to bee presented by the old Constable, and Overseers, to bee Confirmed by the Jus- tices of the Peace at the next Sessions ensuing by taking the Oath appointed for Overseers.

To discharge duties of constables in emergen- cies.

Any one Overseers upon any sudden and necessary occa- sion (the Constable being not at hand, or not in health to performe his Office) May take upon him the Authority of a Constable, Provided that he carry with him the staffe of the Office, which shall be a Sufficient warrant to any such Over- seers to Act by virtue thereof, and in his Majesties name as any Constable might or ought to do.

#### Orphants.

Estates of or- phans, provisions relative to.

That all Persons who now have or shall have any Estate of Goods Chattle or Lands ; in their possession, belonging to any that are under age shall exhibite an Inventory and Accompts of that said Estate within three Moneths next after Publication of this Law, to the respective Courts of Sessions where such Estate shall be and afterwards yearly ; And in Case such Person or Persons who have such Estate, in their hands, do not at the time and place aforesaid pre- sent the Inventory and Accompts of such Estates as afore- said ; Then that the whole businesse be sent to the next Court of Assises where the Offender shall be fined for Neglect of

what may arrise out of the fines and Amerciaments not otherwise disposed of.

To the end all former Purchases &c: all persons whatsoever who have any grants or Patents of Towneshippes, Lands or Houses, within this Government shall bring in the said Grants or Patents to the Governour and shall have them Reviewed by Authority from his Royall Highness the Duke of Yorke, before the beginninge of the next Court of Assizes.

Grants and patents to be brought to governor, and be reviewed.

That every Purchaser &c. shall pay for every hundred Acres as an Acknowledgement two Shillings and Six pence.

Payment of acknowledgement by purchasers.

All persons to bee accompted of fitt age to Marry, when the Man shall attaine to the age of twenty one, and the Women of Eightene years.

Marriagable age, defined.

Every Trooper listed in any Troope of Horse shall keepe and maintaine a good Horse for service when required fitted with Saddle, Bridle Holsters and Pistells, or a Carbine and a Good sword under the penalty of tenn Shillings for the least default, Neither shall any Trooper sell, or change his horse, and leave himselfe destitute, under the penalty of five pounds, And for non appearance upon Dayes of Muster and Exercise, tenn Shillings a day, Neither is it Lawfull for any listed Trooper to disband himselfe (But with leave from his Captaine) under the penalty of fifty Shillings.

Punishment of trooper for not keeping outfit, selling horse, &c.

Or by any Justice of the Peace of the same Rideing, out of Sessions, the Oath appoynted for Overseers being administered unto them.

That whosoever (being duly elected) shall refuse to serve as an Overseer shall pay the same fine, as is appoynted for a Constable refuseing to serve in his Office.

Punishment for refusing to serve as overseer.

That the Justices of the Peace of each Rideinge shall Cause a peece of Ground to bee layed out in the same Towne where the Sessions shall be kept, whereon shall bee built a Towne House, and Prison which are to bee erected before the next Assizes, for the defraying the charges whereof, a Rate is to be made throughout each Rideing at the next Sessions.

Town house and prison, to be erected.

That Pounds and Stocks, shall be Provided in each Towne, by the next Sessions, Under the Penalty of forfeiting forty Shillings for each Towne.

Pounds and stocks, to be provided.

That the High Sherreife from year to year is a Justice of the Peace by Virtue of his Office.

High sheriff, a jus ice of peace *ex officio*.

The last Clause of Towneshippes relating to accions beginning where it is formerly expresst &c. shall be left out.

In the Second Clause Towne Meeteing are to bee written Towne Courts.

Certain clauses, amended.

Whereas it is said the Peculier Constitutions of Townes, are to bee Confirmed within fouer monthes &c. it is to bee written at the next Court of sessions.

Every Witness in any accon may require due to him from the party att whose suite hee appeares two Shillings per Diem for every Dayes attendance, whether hee give in his Evidence voluntarily, or being served by Subpena, but unlesse a witnesse bee Served with Subpœna its in his Choice, whether hee appeares or not.

Witnesses, compensation of.

Not compelled to appear, unless subpoenaed.

Whereas Severall Explicacons and some Amendments in

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Anno Vigesimo Nono

# Georgii II. Regis.

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*An A C T for the better Ordering and Regulating  
such as are willing and desirous to be united for  
Military Purposes within this Province.*

**W** H E R E A S this Province was first settled by Preamble.  
(and a Majority of the Assemblies have ever  
since been) of the People called *Quakers*, who,  
though they do not, as the World is now cir-  
cumstanced, condemn the Use of Arms in others, yet are  
principled against bearing Arms themselves; and to make  
any Law to compel them thereto against their Consciences,  
would not only be to violate a Fundamental in our Consti-  
tution, and be a direct Breach of our Charter of Privileges,  
but would also in Effect be to commence Persecution against  
all that Part of the Inhabitants of the Province: And for  
them by any Law to compel others to bear Arms, and ex-  
empt themselves, would be inconsistent and partial. Yet  
forasmuch as by the general Toleration and Equity of our  
Laws, great Numbers of People of other religious Deno-  
minations are come among us, who are under no such Re-  
straint, some of whom have been disciplined in the Art of  
War, and conscientiously think it their Duty to fight in  
Defence of their Country, their Wives, their Families and  
Estates, and such have an equal Right to Liberty of Con-  
science with others. And whereas a great Number of Pe-  
titions from the several Counties of this Province have been  
presented to this House, setting forth, That the Petitioners  
are very willing to defend themselves and their Country,  
and desirous of being formed into regular Bodies for that  
Purpose, instructed and disciplined under proper Officers,  
with

130. Pa.—General Assembly, Philadelphia; Acts, Nov. 1755, B.  
Franklin; Act, circa 14 Oct. 1755, pp. 243-247.



with suitable and legal Authority; representing withal, that unless Measures of this Kind are taken, so as to unite them together, subject them to due Command, and thereby give them Confidence in each other, they cannot assemble to oppose the Enemy, without the utmost Danger of exposing themselves to Confusion and Destruction. And whereas the voluntary Assembling of great Bodies of armed Men, from different Parts of the Province, on any occasional Alarm, whether true or false, as of late hath happened, without Call or Authority from the Government, and without due Order and Direction among themselves, may be attended with Danger to our neighbouring *Indian* Friends and Allies, as well as to the internal Peace of the Province. And whereas the Governor hath frequently recommended it to the Assembly, that in preparing and passing a Law for such Purposes, they should have a due Regard to scrupulous and tender Consciences, which cannot be done where compulsive Means are used to force Men into Military Service; therefore as we represent all the People of the Province, and are composed of Members of different religious Persuasions, we do not think it reasonable that any should, through a Want of legal Powers, be in the least restrained from doing what they judge it their Duty to do for their own Security and the Publick Good; we, in Compliance with the said Petitions and Recommendations, do offer it to the Governor to be enacted, **AND BE IT ENACTED** by the Honourable **ROBERT HUNTER MORRIS**, Esq; with the King's Royal Approbation, Lieutenant-Governor, under the Honourable **THOMAS PENN**, and **RICHARD PENN**, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and of the Counties of *New-Castle*, *Kent* and *Sussex*, upon *Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province in General Assembly met, and by the Authority of the same, That from and after the Publication of this Act, it shall and may be lawful for the Freemen of this Province to form themselves into Companies, as heretofore they have used in Time of War without Law, and for each Company, by Majority of Votes, in the Way of Ballot, to chuse its own Officers, *to wit*, a Captain, Lieutenant and Ensign, and present them to the Governor or Commander in Chief for the Time being for his Approbation; which Officers so chosen, if approved and commissioned by him, shall be the Captain, Lieutenant and Ensign of each Company respectively, according to their Commissions, and the said

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ficers.

faid Companies being divided into Regiments by the Governor or Commander in Chief, it shall and may be lawful for the Officers so chosen and commissioned for the several Companies of each Regiment to meet together, and, by Majority of Votes, in the Way of Ballot, to chuse a Colonel, Lieutenant-Colonel and Major, for the Regiment, and present them to the Governor or Commander in Chief for his Approbation; which Officers so chosen, if approved and commissioned by him, shall be the Colonel, Lieutenant-Colonel and Major of the Regiment, according to their Commissions, during the Continuance of this Act.

P R O V I D E D A L W A Y S, That if the Governor or Commander in Chief shall not think fit to grant his Commission to any Officer so first chosen and presented, it shall and may be lawful for the Electors of such Officer to chuse two other Persons in his Stead, and present them to the Governor or Commander in Chief, one of whom, at his Pleasure, shall receive his Commission, and be the Officer as aforesaid.

The Companies to be formed into Regiments.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That as soon as the said Companies and Regiments are formed, and their Officers commissioned, as aforesaid, it shall and may be lawful to and for the Governor, or Commander in Chief, by and with the Advice and Consent of the Colonels, Lieutenant-Colonels, and Majors of all the Regiments, being for that Purpose by him called and convened, or by and with the Advice and Consent of a Majority of the said Officers that shall be met and present together on such Call, to form, make and establish Articles of War, for the better Government of the Forces that shall be under their Command, and for bringing Offenders against the same to Justice; and to erect and constitute Courts Martial, with Power to hear, try and determine any Crime or Offences by such Articles of War, and inflict Penalties by Sentence or Judgment of the same on those who shall be subject thereto, in any Place within this Province. Which Articles of War, when made as aforesaid, shall be printed and distributed to the Captains of the several Companies, and by them distinctly read to their respective Companies; and all and every Captain, Lieutenant, Ensign, or other Freeman, who shall, after at least three Days Consideration of the said Articles, voluntarily sign the same, in the Presence of some one Justice of the Peace, acknowledging his having perused or heard the same distinctly read, and

Governor and Field Officers to make Articles of War, &c.

Which Articles to be printed, and the Companies to have 3 Days to consider them.

X x x

that

Those who  
sign the Arti-  
cles to be  
bound by  
them.

that he has well considered thereof, and is willing to be bound and governed thereby, and promises Obedience thereto, and to his Officers accordingly, shall thenceforth be deemed well and duly bound to the Observance of the said Articles, and to the Duties thereby required, and subject to the Pains, Penalties, Punishments and Forfeitures that may therein be appointed for Disobedience and other Offences.

Articles not  
to be repug-  
nant to Laws  
of Great-  
Britain, &c.

**PROVIDED ALWAYS,** That the Articles so to be made and established, shall contain nothing repugnant, but be as near as possible conformable to the military Laws of *Great-Britain*, and to the Articles of War made and established by his Majesty, in Pursuance of the last Act of Parliament for punishing Mutiny and Desertion; the different Circumstances of this Province compared with *Great-Britain*, and of a voluntary Militia of Freemen, compared with mercenary standing Troops, being duly weighed, and maturely considered.

Not to affect  
scrupulous  
Consciences,  
or others who  
don't sign  
them,

**PROVIDED ALSO,** That nothing in this Act shall be understood or construed to give any Power or Authority to the Governor or Commander in Chief, and the said Officers, to make any Articles or Rules which shall in the least affect those of the Inhabitants of the Province who are conscientiously scrupulous of bearing Arms, either in their Liberties, Persons or Estates; nor any other Persons of what Perswasion or Denomination soever, who have not first voluntarily and freely signed the said Articles, after due Consideration as aforesaid.

Apprentices  
and Servants  
not to be en-  
roll'd.

**PROVIDED ALSO,** That no Youth, under the Age of Twenty-one Years, nor any bought Servant or indented Apprentice, shall be admitted to enroll himself, or be capable of being enrolled in the said Companies or Regiments, without the Consent of his or their Parents or Guardians, Masters or Mistresses, in Writing under their Hands first had and obtained.

No Enlist-  
ment to pro-  
tect from ci-  
vil Actions  
except when  
in Service,  
&c.

**PROVIDED ALSO,** That no Enlistment or Enrollment of any Person, in any of the Companies or Regiments to be formed and raised as aforesaid, shall protect such Person in any Suit or civil Action brought against him by his Creditors or others, except during his being in actual Service in Field or Garrison; nor from a  
Pro-



Prosecution for any Offence committed against the Laws of this Province.

PROVIDED ALSO, That no Regiment; Company, or Party of Volunteers, shall, by Virtue of this Act, be compelled or led more than three Days March beyond the inhabited Parts of the Province; nor detained longer than three Weeks in any Garrison, without an express Engagement for that Purpose first voluntarily entered into and subscribed by every Man so to march or remain in Garrison.

No Regiment, &c. obliged to march above 3 Days from the settled Parts.

This Act to continue in Force until the Thirtieth Day of October next, and no longer.

Limitation of this Act.

*An ACT for granting the Sum of Sixty Thousand Pounds to the King's Use, and for striking Fifty-five Thousand Pounds thereof in Bills of Credit, and to provide a Fund for sinking the same.*

WHEREAS the King's Service at this Time requires extraordinary Supplies from this Province, and the Treasury (by the several Sums of Money already given by former Assemblies for purchasing Provisions for the King's Forces, erecting and maintaining Posts, Payment of Expresses, clearing of Roads, maintaining of *Indians*, and other heavy Charges for the King's Use) is exhausted: We the Representatives of the Freemen of the Province of *Pennsylvania*, being desirous of demonstrating our Duty to our Sovereign, and willing to give a further Testimony of our Loyalty, and the most sincere Affection of his loving Subjects within this Province, do pray, that it may be enacted, AND BE IT ENACTED by the Honourable ROBERT HUNTER MORRIS, Esq; Lieutenant-Governor, under the Honourable THOMAS PENN, and RICHARD PENN, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and Counties of *New-Castle*, *Kent* and *Suffex* upon *Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province in General Assembly met, and by the Authority

Preamble.

and enacted into a law by the legislature of the province of Maryland and be in full force and virtue, anything herein contained to the contrary thereof in any wise notwithstanding.

Passed March 14, 1761. Referred for consideration by the King in Council, February 15, 1762, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section II, and (the two acts of Assembly) passed March 9, 1771, Chapters 627, 638; March 14, 1777, Chapter 747; March 30, 1784, Chapter 1092; March 31, 1785, Chapter 1155; April 7, 1786, Chapter 1222; March 19, 1794, Chapter 1722; March 17, 1796, Chapter 1882; April 8, 1799, Chapter 2063; February 8, 1804, P. L. 75; March 16, 1807, P. L. 74; February 23, 1809, P. L. 14; March 19, 1810, P. L. 117; (the two acts of) March 1, 1815, P. L. 57, 59; March 24, 1817, P. L. 179; March 23, 1819, P. L. 161; March 27, 1819, P. L. 188; January 29, 1823, P. L. 16; February 9, 1824, P. L. 242; April 11, 1825, P. L. 235; April 16, 1827, P. L. 446; April 23, 1829, P. L. 285; March 30, 1832, P. L. 233; March 4, 1835, P. L. 51; April 3, 1837, P. L. 198; April 5, 1842, P. L. 230; February 26, 1844, P. L. 55; March 2, 1844, P. L. 66; April 4, 1844, P. L. 186; March 28, 1845, P. L. 238; March 19, 1846, P. L. 143; April 15, 1852, P. L. 353; April 2, 1858, P. L. 200; April 16, 1858, P. L. 365; March 30, 1866, P. L. 370; April 9, 1868, P. L. 77; March 27, 1869, P. L. 557; April 8, 1869, P. L. 19; May 24, 1871, P. L. 275; April 28, 1873, P. L. 82, 886; June 3, 1878, P. L. 160; (the two acts of) June 11, 1879, P. L. 154, 163; June 10, 1881, P. L. 92; June 27, 1883, P. L. 163; May 23, 1887, P. L. 165; (the three acts of) May 22, 1889, P. L. 261, 264, 267; April 15, 1891, P. L. 19; May 12, 1891, P. L. 52; June 24, 1895, P. L. 241; (the four acts of) June 25, 1895, P. L. 286, 295, 299, 305.

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## CHAPTER CCCCLXIV.

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AN ACT FOR RAISING, PAYING AND CLOTHING THREE HUNDRED MEN PROPERLY OFFICERED, FOR RELIEVING THE SEVERAL FORTS AND POSTS WITHIN THE COMMUNICATION TO PITTSBURG AND FOR CONTINUING AN ACT FOR REGULATING THE OFFICERS AND SOLDIERS IN THE PAY OF THIS PROVINCE.

Whereas in pursuance of an act of general assembly of this province passed in the thirty-third year of His late Majesty's reign, entitled "An act for granting to His Majesty the sum of one hundred thousand pounds and for striking the same in bills of credit in the manner hereinafter directed and for providing a fund for sinking the said bills of credit by a tax on all

135. Pa.—*General Assembly, Philadelphia; Stats. Atl. Mitchell & Flanders, 1899; Act, Mar. 14, 1761, Ch. CCCCLXIV, pp. 91-93.*



estates, real and personal, and taxables within this province,"<sup>1</sup> the sum of one hundred thousand pounds was granted to His Majesty's use for and towards raising, paying and clothing two thousand seven hundred men, officers included, to act in conjunction with His Majesty's forces until the twenty-fifth day of November, one thousand seven hundred and sixty, and for other purposes for His Majesty's service. And whereas the officers and men so as aforesaid raised were discharged and paid off on or about the time in the act limited and appointed and there yet remains a balance of the said one hundred thousand pounds in the trustees' hands not appropriated to any particular uses.

And whereas at the requisition of General Amherst it has been represented to this assembly by our governor that His Majesty's service renders it absolutely necessary that the general do remove Colonel Vaughan's regiment from the forts and posts within the communication to Pittsburg, and that from the present situation of His Majesty's troops the general has no others to relieve them with.

Therefore, as a further demonstration of our loyalty to His Majesty and our ready and cheerful compliance with all measures which may be for His Majesty's service so far as lies in our power:

[Section I.] Be it enacted by the Honorable James Hamilton, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the Representatives of the freemen of said Province in General Assembly met, and by the authority of the same, That three hundred effective men, properly officered, shall be raised, clothed and paid at the expense of this province out of the remaining part of the money heretofore granted to the King's use by the act herein first above mentioned, to act in conjunction with His Majesty's forces in relieving the several forts and posts within the communication to Pittsburg until the twenty-fifth day of November, one thousand seven hundred and sixty-one, or until a peace between the Crowns of Great Britain

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<sup>1</sup> Passed April 12, 1760, Chapter 453.

and France shall be ratified and concluded, as either of them shall first happen, and the moneys so to be paid for the purposes aforesaid shall be drawn for by the commissioners, with the consent of the governor, by orders on the trustees in the same manner as in the act hereinbefore mentioned is directed and provided; and the orders so drawn on the trustees of the general loan office and by them paid shall be produced to the committee of assembly for the time being, and by the said committee shall be allowed in discharge of so much of the money remaining in the trustees' hands by virtue of the act for granting to His Majesty the sum of one hundred thousand pounds, [&c.,] herein first above mentioned, in as full and ample manner as if this act and every article, clause and thing herein contained had been inserted in the body of the said act, anything in this act or the above-mentioned act to the contrary notwithstanding.

[Section II.] And be it further enacted by the authority aforesaid, That the act, entitled "An act for regulating the officers and soldiers in the pay of this province,"<sup>1</sup> passed in the thirty-third year of His late Majesty's reign, and every article, clause and thing therein contained, shall be and continue in full force and virtue till the twenty-fifth day of March, one thousand seven hundred and sixty-two, and no longer.

Passed March 14, 1761. Referred for consideration by the King in Council, February 15, 1762, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Sections II and V, and the note to the Act of Assembly passed April 21, 1760, Chapter 457; and the Act of Assembly passed July 8, 1763, Chapter 501.

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## CHAPTER CCCCLXV.

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### AN ACT FOR MAKING THE RIVER SCHUYLKIL NAVIGABLE AND FOR THE PRESERVATION OF THE FISH IN THE SAID RIVER.

Whereas the river Schuylkil is navigable for rafts, boats and other small craft in times of high freshets only, occasioned by

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<sup>1</sup> Passed April 21, 1760, Chapter 457.

the same before any justice of the peace for the county wherein they respectively reside.

Resolved, That on Monday next this House will resume the consideration of the frame of government.

Adjourned to nine o'clock to-morrow morning.

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Saturday, September 14, 1776.

The Convention met, pursuant to adjournment.

A return of such men of Colonel Montgomery's battalion of Chester county militia, who left the camp in New Jersey without regular discharges, was made to the House, and referred to the council of safety.

Whereas, from the letters received from the commissioners for Indian Affairs for the Middle Department, with the affidavit therein enclosed, there is too much reason to apprehend that the Indians have been encouraged by the agents of his Britannic Majesty to fall on the frontiers of these States; therefore, it behooves this Convention to take every prudent precaution for the safety of our western frontiers, and as, by the resolves of the late Assembly of this State, the council of safety have the sole power of calling out the associators within the same, but, by reason of the great distance of the frontier counties, and by reason that it may be absolutely necessary, at a very short warning, to order out the associators of the said counties, or such part of them, from time to time, as persons on the spot can only judge thereof,

Resolved, That the member of the council of safety for the county of Bedford, and Bernard Dougherty, William M'Comb, James Anderson and Robert Elliott, of the said county; and that the member of the council of safety for the county of Northampton, and Nicholas Dupui, David Deshler, Herman Schneyder and Arthur Lattimore, of the said county; and that the member of the council of safety for the county of Northumberland, and William M'Clay, Michael Troy, Walter Clark and Laughlin M'Cartney, of the said county; and that the member of the council of safety for the county of Westmoreland, and Samuel Sloane, William Lockray, John Giffen and

574. Pa.—*Minutes of the Convention for the State of Pennsylvania, Philadelphia, Pa.; Statutes, Vol. 9, 1903, Mitchell & Flanders, Appendix, Sec. II; Act, Sept. 14, 1776, pp. 566-567.*



Christopher Trubey, of the said county, respectively, or a majority of them in each county, respectively, be, and they are hereby empowered to order or approve of the going out of such part of the associators as they may think necessary, in case of an actual invasion, to march to the protection of such part of the said counties as may be exposed to the depredations of the Indians, or to repel any attack which may be made by them, in the most effectual manner. And in case of any sudden invasions made by the Indians, and not otherwise, the captain or commanding officer of any company, in the said county, is hereby empowered to order out such part of his company as he may judge necessary for the purpose aforesaid. And in case any of the said counties should be invaded, the said members of the council of safety, and commissioners of the said other counties, respectively, are hereby empowered, as often as they shall judge necessary, to order out the associators, or a part of them, for the assistance of such county which may be so invaded. And the member of the council of safety, and his associates for the respective counties aforesaid, are hereby directed to make out the accounts of the pay, subsistence and necessary expenses of such associators as shall be called out as aforesaid, and lay the same before the council of safety or future Assembly of this State, in order that the same, appearing to them just and reasonable, may be paid.

The committee, who were appointed to confer with the honorable delegates in Congress, from the State of Virginia, on the settlement of a temporary boundary between the State of Virginia and this State, reported to the Convention, that they met the said delegates, who delivered to them the following resolve of the Convention of Virginia, and the following letter from the committee of safety of that State to their delegates, as their proposal on their subject. In answer to which the committee delivered the letter and proposal (which answer and proposal the committee approve of) in reply; to which they received the letter herein after last mentioned, by which it appears that the power of the honorable delegates, on this subject, is at an end. But, as they therein inform the committee, that they will, without delay, transmit their proposal to the Governor

SECT. 3. *And be it further enacted by the authority aforesaid,* That the Assessors of the respective counties in this commonwealth are enjoined and required, to take an oath or affirmation, which oath or affirmation shall be in the same words as is directed in this act to be taken by the Commissioners excepting the words Commissioners, in the stead of which the word Assessor shall be used. And the Commissioners, or any one of them (having taken the oath as herein before directed) are hereby authorized and required to administer; which oath, so taken, shall be subscribed by the Assessors aforesaid and certified by the Commissioner.

1777.

Assessor's  
oath or affir-  
mation.

SECT. 4. *And be it further enacted by the authority aforesaid,* That the oaths and affirmations taken as directed in this act, is hereby declared to be as binding, to all intents and purposes, on all persons, as the oaths and affirmations administered and taken according to the form prescribed by the laws of Pennsylvania,

The said  
oaths, &c. to  
be binding.

JOHN JACOBS, SPEAKER.

PASSED in General Assembly, on

Wednesday, February 12th, 1777.

T. M A T L A C K, CLERK of the General Assembly.

## CHAPTER VII.

*An ACT directing the mode of collecting the Fines imposed on persons who did not meet and exercise in order to learn the Art Military, according to the Resolves of the late Assembly of Pennsylvania:*

SECTION 1. **W**HEREAS by a Resolve of the late House of Assembly, dated the fifth day of April, One Thousand Seven Hundred and Seventy-six, imposing a fine on all able bodied effective male white persons capable of bearing arms, not Associators, between the ages of sixteen and fifty years (Ministers of the Gospel of all denominations, School-Masters, in actual employ, and Servants purchased bona fide and for a valuable consideration only excepted. \*

Preamble. ✓

\* Page [12]

SECT. 2. **A**ND WHEREAS (to the great discouragement and dissatisfaction of the spirited and virtuous Associators in this State) the fines have not been collected: Therefore for making effectual the said Resolve,

SECT. 3. *Be it enacted,* and it is hereby enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the three Commissioners which, at the time of their meeting shall then have been last elected in each county respectively in this commonwealth, or any two of them, be required and enjoined, and they are hereby required and enjoined to meet together, at the Court-house in their respective counties, on the twenty-eight day of February instant, and appoint a proper person in each ward, township, and district, under their hands and seals, to make a return to them, in writing of the names and surnames of every male white person capable of bearing arms; at the time of passing the said Resolves by the said late Assembly, between the ages of sixteen and fifty years (Ministers of the Gospel of all denominations, School-Masters in actual employ, and Servants purchased bona fide and for a valuable consideration only excepted) where such returns have not already been made.

Commis-  
sioners appoint  
proper per-  
sons to make  
returns of all  
males be-  
tween 16 &  
50

exception,

D

SECT. 4.

27

1777.

Penalty on  
persons re-  
fusing to  
serve.

Commis-  
sioners to re ap-  
point.

SECT. 4. *And be it further enacted by the authority aforesaid,* That if any person or persons appointed as aforesaid, shall neglect or refuse to perform the duty aforesaid, the Commissioners aforesaid of the respective counties, or any two of them, are hereby required and enjoined to fine him or them, in any sum not exceeding twenty pounds, and such fine shall be levied and recovered in the same manner as hath been heretofore directed by the Laws of Pennsylvania for levying and recovering fines imposed on Assessors refusing, or neglecting to perform the duties therein required of them; which fines shall be paid into the hands of the respective county Treasurer, to be by them applied to the same use as other monies directed to be levied by this Act: And the Commissioners aforesaid, or any two of them, are hereby enjoined and required to appoint some proper person to make out the lists aforesaid, in the place of the person first appointed, who shall make out such lists and return them to the Commissioners on or before the twenty-seventh day of March next ensuing.

Oath or affir-  
mation of  
the person  
appointed to  
make there-  
turn.

SECT. 5. *And be it further enacted by the authority aforesaid,* That every person appointed as aforesaid shall, before he enters upon the duty of his office, take an oath or affirmation, which any Justice, Commissioner or county Assessor, is hereby authorized and required to administer without fee or reward (if a person of the first appointment) that he will make a faithful and diligent enquiry, and endeavor by proper and lawful ways and means to procure a true and exact account and list of the names and surnames, of all male white persons capable of bearing arms, who were between the ages of sixteen and fifty years, before the last Monday in February last past, residing within his township, borough, ward or district, and will make a just and true return of such account or list to the Commissioners aforesaid on or before the eleventh day of March next ensuing, or (if a person not of the first appointment) on or before the twenty-seventh day of March next ensuing, and every person appointed and acting as aforesaid shall receive for his trouble in making out and returning such lists, the sum of five shillings for every day he shall be employed in that service. And if any dispute shall arise concerning the age of any Non-Associator, the same shall be determined by the Commissioners aforesaid, who shall be judges of the evidence produced in favor of such Non-Associator.

their pay.

disputes how  
settled.

Captains, &c.  
to make lists  
of associators  
and return  
them to the  
colonel, who  
shall return  
duplicates to  
the Commis-  
sioners.

SECT. 6. *And be it further enacted by the authority aforesaid,* That the Captain or commanding officer of each company is hereby required and enjoined, on or before the twentieth day of March next ensuing, to deliver under his hand to the Colonel or commanding officer of the battalion to which he belongs, a list of all the persons belonging to his company who have at any time signed the articles of Association, therein mentioning the time of their first signing the said articles, the county and township, borough, ward or district, in which each of the said Associators resides, which the Colonel or commanding officer shall carefully keep, and therefrom shall immediately make out and return on or before the twenty-seventh day of March, a fair duplicate to the Commissioners aforesaid, except the same be already done.

Fine of 3  
pound 10/6 on  
Non-Associ-  
ators.

\* Page [13]

and 3/6 per  
day on asso-  
ciators neg-  
lecting.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the Commissioners aforesaid respectively, or any two of them, are hereby required and enjoined to cause their Clerks to make out fair lists of the names and surnames of all persons mentioned in the duplicates returned to them as aforesaid, with the places of abode of those who appear, by the duplicates returned by the Colonels or commanding officers, not to have signed the articles of Association, and thereupon the said Commissioners are required to charge every such person not associating the sum of three pounds ten shillings on the lists made out on their order as aforesaid, and every person who hath signed the articles of Association after the last Monday of February last, three shillings and six pence for each and every parade day appointed by the aforesaid Resolves before his signing



as aforesaid, all which lists as aforesaid, to be made out on or before the tenth day of April next, on which day the Assessors of the city, and the Assessors of the counties respectively, or any four of them, and one or more of the Commissioners shall meet together, at the county Court-house, or such convenient place as the said Commissioners shall appoint, and appoint a proper person in each township, ward and district, in the same manner as directed in the county levy Act of Pennsylvania for collecting the county taxes, to collect the fines aforesaid which Collectors so appointed shall have the same powers and authorities as the Collectors appointed by virtue of the county levy Act aforesaid for collecting county taxes have had and exercised, or ought to have and exercise.

1777.

SECT. 8. *And be it further enacted by the authority aforesaid,* That if any Collector appointed as aforesaid, shall refuse or neglect to do and perform his several and respective duties as required by this act, he shall forfeit and pay the sum of Twenty Pounds, to be recovered in the same manner as fines are directed to be recovered from the Collectors appointed by virtue of the county levy act aforesaid, upon their neglect or refusal, and be paid into the same hands, and applied to the same uses, as other money raised by virtue of this act: And in such case, the Commissioners of the counties respectively, or any two of them, shall appoint another Collector in his stead, who shall have the same power and authority as the other Collectors aforesaid, and be subject to the same fines and forfeitures as aforesaid.

Fine of 20 pounds on Collectors refusing to do their duty.

SECT. 9. *And be it further enacted by the authority aforesaid,* That if any apprentice was willing to associate, and his master or mistress did not permit him so to do, or detained him from going to the parade on any of the days of exercise appointed by the Resolves of the late Assembly, such master or mistress shall be liable to the payment of Three Shillings and Six Pence for each time he or she did hinder or so detain his or her said apprentice; and if such apprentice shall have neglected or refused to appear on any of the said days of exercise not being detained by his said master or mistress, he, if of estate, shall, by his guardian, pay such fine, and the father or mother of any minor or minors Associators and Non-Associators, being in the service of his father or mother, shall be accountable to the Collector for his or their fines charged as aforesaid.

Fines on apprentices, & other minors by whom to be paid.

SECT. 10. *And be it further enacted by the authority aforesaid,* That if any Commissioner, or city or county Assessor, shall neglect or refuse to perform any of the duties required of him by this act, such Commissioner or Assessor shall forfeit and pay the sum of Thirty Pounds for every such offence; such fine to be levied and recovered in the same manner as the fines are directed to be levied and recovered in the county levy act aforesaid, and paid and appropriated in the same manner and for the same purposes as the other monies raised by virtue of this act, and in such case the Commissioner or Commissioners, and Assessors, who shall proceed agreeable to the directions of this act, or a majority of them, are hereby enjoined to appoint another suitable and proper person to act in his stead so refusing or neglecting as aforesaid, which person so appointed, shall have the same power and authority, and perform the several duties hereby required of the said Commissioners and Assessors, and on failure thereof shall forfeit and pay the sum of Thirty Pounds to be applied as aforesaid.

Fines on Commissioners and Assessors refusing to act, & how to be recovered.

SECT. 11. *Provided nevertheless, and it is hereby enacted by the authority aforesaid,* That those who have formed themselves into regular companies and signed written articles of association, agreeable to the intentions of the Resolves of the late Assembly, and have attended the parade, and mustered the number of twenty days within the time limited by the said Assembly (unless having marched into the Jersey on actual service) shall be considered in the same light,

Provido,

1777.

and dealt with in the same manner, as those who have signed the Articles of Association framed by the late House of Assembly. And that such as have not signed any Association whatever, nor attended to any particular muster days, yet on the first call of the Associators last summer, did cheerfully turn out to camp and the time then required of the Associators in defence of the American States, shall be deemed as Associators from the time of their engaging in the said service. \*

\* Page [14]

Appeal for  
Non-Associators,  
their  
guardians,  
&c.

SECT. 12. *And be it further enacted by the authority aforesaid,* That if any non-Associator, or the parent, guardian, master or mistress, of any non-Associator between the ages of sixteen and twenty-one years, or any other non-Associator, shall think him or herself aggrieved by the assessment aforesaid, he or she may appeal to the County-Commissioners, where he or she resides, who, or any two of them, shall meet together, on or before the twelfth day of May next ensuing, and so from day to day as long as may be necessary, and at such place or places as the Commissioners, or any two of them, shall appoint, of which days and places of meeting they shall cause the Collectors to give due notice to the persons so charged, or by this act made liable to the fines as aforesaid, and also return the names of all persons omitted or not charged in their duplicates respectively, who are made fineable by this act, and then and there the said Commissioners, or any two of them, shall hear such appeals as may be made to them, and may discharge such assessment, or lower the same, as to them on consideration of inability of person or estate (only) shall appear just and equitable.

Duty of the  
Commissioners:

SECT. 13. *And be it further enacted by the authority aforesaid,* That the said Commissioners of the counties respectively, or any two of them, within ten days after hearing and determining the appeal made to them, shall rectify and adjust the lists returned to them as aforesaid, and the assessments thereon, and deliver to the Treasurers of the counties respectively, a true account of the sum total which every Collector shall be charged with, in pursuance of this act, and shall cause their Clerks to make out and deliver fair duplicates thereof, to the respective Collectors of the townships, boroughs, wards and districts, within the said city and counties respectively, who shall collect the said sums, and shall pay the same into the hands of the County Treasurer respectively, who shall pay the same into the hands of the State-Treasurer for the time being, to be applied in such manner as this or any future House of Assembly shall direct, and the Commissioners and Assessors shall be allowed seven shillings and six pence per diem, for their service aforesaid, and all persons shall be liable to the payment of the said sums, in the same manner, and the Collectors shall have the same powers, and shall proceed in collecting and levying the said sums, and shall be accountable in the same manner, as is directed by the act of General Assembly of Pennsylvania, entitled "An act for raising county rates and levies, for collecting the county taxes," and the Collectors shall have for their care and trouble in collecting the said fines, one shilling in the pound for all such monies collected as aforesaid, and the Treasurer shall have for his care and trouble in receiving from the Collectors, delivering to the State Treasurer, and paying the Commissioners orders, one per cent. and the State Treasurer shall have for his trouble, one fourth per cent.

Fines to  
whom to be  
paid.

Pay of the  
Commissioners,  
Collectors,  
and  
Treasurers.

Treasurers to  
give security.

SECT. 14. *And be it further enacted by the authority aforesaid,* That the Treasurers of the counties respectively, before they enter on the duties hereby required of them, shall give security to the Commissioners for the faithful discharge of their office, in the sum of fifteen hundred pounds.

JOHN JACOBS, SPEAKER.

PASSED in General Assembly, on

Friday, February the 14th, 1777.

T. MATLACK, Clerk of the General Assembly:



1777. Affessors required, in the same manner, and under the same penalties, as set forth in the Act to which this is a Supplement, and the Freeholders of the several Districts in the said County are, on the day which the said Commissioners and Affessors shall appoint, for the purpose of electing, to proceed to the election of the Justices of the Peace in their respective Districts, in the same manner as is by the said Act directed for electing Justices, who, when chosen, shall be held and deemed as legally elected, as if the same had been done on the day appointed by the said Act, any thing therein contained to the contrary notwithstanding.

AND WHEREAS many of the Militia of Northampton and other Counties, are now, and some others may be in actual service, whereby several of the Districts in the said County have been, or may be deprived of their right in the choice of their Justices of the Peace, according to the intention of the said Act. *Be it therefore further enacted by the authority aforesaid,* That it shall and may be lawful for the Commissioners and Affessors, or any five of them of the said County of Northampton, or such other Counties as aforesaid, to advertize the Freeholders of such District or Districts to meet together on the third Tuesday in April next, at some convenient place within the said Districts respectively, in order to choose their Justices of the Peace, that they may be commissioned accordingly, and if the Freeholders of any Township or Townships in this State, which by the said Act is made a District, shall neglect to elect Justices on the day therein mentioned, the Freeholders of every such District, are hereby authorized to appoint such time and place as may suit their conveniency, within three months hereafter, and elect Justices as by the said Act is directed.

AND WHEREAS the Freeholders of several of the Wards in the City of Philadelphia, have neglected to elect Justices of the Peace, as by the said Act was directed, and it may happen that some other parts of the State may also neglect to elect Justices, at the time in the said Act and by this Act directed. *Be it enacted by the authority aforesaid,* That where any such neglect has been or may be, at the time by the above recited Act, or by this Act directed for the election of Justices, for any District in any or either of the said Counties, the Commissioners and Affessors of such County or Counties, or any five of them (in such County or Counties where they are directed so to do by the said Act) are hereby enjoined and required to appoint a time and place for election of Justices of the Peace for such District, and give notice thereof to the Freeholders, who shall hold the said election, and in all things relating thereto, act and do agreeable to the directions of the Act, to which this Act is a Supplement, and when they shall have elected Justices, they shall be deemed and taken to be Justices of the Peace, as is in and by the said Act declared.

AND WHEREAS it has been represented to this Assembly, that the inhabitants of the Borough of Chester express a dissatisfaction that they have but one Justice of the Peace allotted to them, inasmuch as other Boroughs have more, AND WHEREAS it may happen that some District or Districts may yet neglect to elect Justices notwithstanding this Act. *Be it therefore enacted by the authority aforesaid,* That in any or either of the said cases, on application being made in writing, by twenty or more of the Freeholders of the Borough of Chester, or of any such other District, to the President of this State, it shall be lawful for the President in Council, to appoint and commission one or more Justice or Justices of the Peace as the case may require, for the said Borough or District respectively, any thing in this, or the Act to which this is a Supplement, to the contrary notwithstanding.

JOHN JACOBS, SPEAKER.

PASSED March 15th, 1777.

JOHN MORRIS, Junior, CLERK of the General Assembly.

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*An ACT to regulate the Militia of the Common-Wealth of Pennsylvania.*

WHEREAS a Militia Law upon just and equitable principles, hath ever been regarded as the best security of Liberty, and the most effectual means of drawing forth and exerting the natural strength of a State: AND WHEREAS it is the indispensable duty of the Freemen of this Common-Wealth, to be at all times prepared to resist the hostile attempts of it's enemies, and more especially now, when America is invaded by a powerful army of British and Foreign Mercenaries, and the freedom handed down by our virtuous ancestors, may be in danger of being wrested from us, unless the strongest and most immediate efforts are made for it's support. *Be*

131. Pa.—General Assembly, Philadelphia; Acts, Mar. 1777, Dunlap; Act, Mar. 17, 1777, pp. 22–30.

*Be it enacted*, and it is hereby enacted by the Representatives of the Freemen of the Common-Wealth of Pennsylvania in General Assembly met, and by the authority of the same, That the President, or, in his absence the Vice-President of the Supreme Executive Council of this Common-Wealth, shall commissionate one reputable Freeholder in the City of Philadelphia, and one in each County within this State, to serve as Lieutenant of the Militia for the said City and Counties respectively, who, besides the powers which are given him by this Act, shall have the title and rank which the President and Council shall confer; and also any number of persons not exceeding five for the said City and each County, qualified as aforesaid, to serve as Sub-Lieutenants in the said City and Counties respectively, which said Lieutenant and Sub-Lieutenants shall be respectively nominated by this House; and which Lieutenant, or in his absence or incapacity, two or more Sub-Lieutenants, shall have full power and authority to do and perform, all and singular the duties required of them by this Act, except in cases where a greater number is hereby directed to join together to perform any service. 1777.

*And be it further enacted by the authority aforesaid*, That the said Lieutenants or Sub-Lieutenants, as aforesaid, shall issue his or their warrant to the Constable of each Township, Borough, Ward or District in the said City and Counties respectively, or to some other suitable person, commanding him in the name of this Common-Wealth to deliver to him or them the said Lieutenant or Sub-Lieutenants, within ten days from and after the date of the said warrants (unless the Lieutenant or Sub-Lieutenants shall judge a longer time to be necessary, which he is hereby impowered to grant) on oath or affirmation, which they are also hereby impowered to administer, a true and exact list of the names and surnames of each and every male white person, usually inhabiting or residing within his Township, Borough, Ward or District, between the ages of eighteen and fifty-three years, capable of bearing arms, Delegates in Congress, Members of the Executive Council, Judges of the Supreme Court, Masters and Faculty of Colleges, Ministers of the Gospel (or Clergy) of every denomination, and servants purchased bona fide; and for a valuable consideration, only excepted.

*And be it further enacted by the authority aforesaid*, That the Lieutenant or Sub-Lieutenants as aforesaid, within five days after they shall become possessed of the lists aforesaid, shall divide the City and Counties respectively into Districts, each District to contain not less than four hundred and forty, nor more than six hundred and eighty privates, at the discretion of the Lieutenant, and sub-divide the said Districts into eight parts as nearly equal as may be, paying due regard in each division to the convenience of the inhabitants: *Provided always*, that nothing in this Act contained shall be construed to include any of the Artillery Companies or Troops of Light Horse, already formed within this State, nor shall prevent or restrain the said Lieutenants respectively from forming a suitable number of other companies of Artillery and Troops of Light Horse in convenient places throughout the same: And the said Lieutenants shall give public notice by advertisements at ten or more of the most public places in the said Districts respectively, of the said divisions being made, and appointing a certain day for each District, not less than five days after the said notice, and requiring the male white inhabitants between the ages aforesaid, residing in the said divisions respectively to meet at a certain place as near the center of the said division as may be, and then and there, between the hours of ten in the morning and six in the afternoon of the said day, to elect by ballot, three Field Officers (that is to say, one Colonel, one Lieutenant-Colonel, and one Major) each of whom shall be a Freeholder, and the inhabitants of the said sub-divisions respectively shall elect by ballot as aforesaid, on the same or some other convenient day as soon as possible afterward to be appointed by the Lieutenant, one Captain, two Lieutenants, one Ensign, and two persons to be styled Court-Martial Men, who shall respectively be such persons as are intitled to vote for members to serve in the General Assembly; and each of the said Captains shall appoint a suitable person for a Clerk in his company. And the said Lieutenant, or in his absence, two or more of the said Sub-Lieutenants, shall attend and superintend each and every of the said battalion elections, and shall cause the Colonels so elected in the City and Counties respectively to meet together as soon as may be, and cast lots for rank of their battalions, and the rank of the officers in each battalion shall be determined by the lot drawn by their respective Colonels: And the Captains so elected in the sub-divisions, shall meet and cast lots for their rank in the battalion to which they belong; and the rank of the Subaltern Officers of each company shall be determined by the lot drawn by their respective Captains; and the said Lieutenants shall, within ten days, or as soon as may be, having regard to their local situations, transmit proper certificates to the President of the Executive Council, of the names of the persons so as aforesaid elected, and their rank, both of battalion and companies



1777. panies in the several battalions, in order that commissions may forthwith be granted to them, agreeable to the said certificates. And no Militia Officer shall be required to take and subscribe any oath or affirmation at this time, to qualify him to receive a commission to act in the character to which he shall be elected.

*And be it further enabled by the authority aforesaid,* That if any battalion or battalions, company or companies, shall neglect or refuse to elect their officers as aforesaid, then and in such case, it shall and may be lawful for the Lieutenant, with the advice and consent of two or more of the Sub-Lieutenants of such County where such neglect or refusal shall be, to appoint such officers so neglected to be chosen, and certify the same to the President of the Council as aforesaid, which shall be as effectual to all intents and purposes, as if the said officers had been elected as first before directed; and the said Lieutenant shall, as soon as may be, acquaint the parties so neglecting or refusing, with the appointments so as aforesaid made, and the said several and respective officers elected or appointed as aforesaid, shall respectively serve as officers of the Militia for the space of three years, at the end of which time, the Lieutenant of the City and Counties respectively, in the manner herein before directed, shall cause a new election to be held in the said City and Counties respectively. But nothing herein contained, shall be construed to render any of the former officer or officers incapable of being re-elected.

*And be it further enabled by the authority aforesaid,* That the rank or precedence of the officers of the City of Philadelphia, and of the several Counties in this Common-Wealth, shall be determined as follows, that is to say, Officers of the City of Philadelphia, the District of Southwark, the Townships of the Northern Liberties, Moyamensing, and Passyunk, to take rank or precedence of all other officers of equal dignity in this State, and next to them the officers of the County of Philadelphia, and so on according to the seniority of the Counties respectively.

*And be it further enabled by the authority aforesaid,* That the several Lieutenants aforesaid, shall, within three days after the respective elections aforesaid, cause the several companies of Militia in their respective precincts, to be divided by lot into eight parts, to be called Classes, as nearly equal as may be, and numbered from one to eight in numerical order, and the said Captains shall cause the names and surnames of the persons in the respective companies, with the Class to which each belongeth, to be returned to the said Lieutenants respectively, at such time as they shall appoint, within six days after such divisions are made.

*And be it further enabled by the authority aforesaid,* That the whole of the Militia so enrolled as aforesaid, shall be subject to be exercised in companies under their respective officers as followeth, that is to say, on the two last Mondays in the month of April, and the three first Mondays in the month of May, and in battalion on the fourth Monday in May; and in companies on the two last Mondays in the month of August, and the two last Mondays in the month of September, and the third Monday in the month of October; and in battalion on the fourth Monday in October; and on each of which days every Militia-Man so enrolled, shall duly attend with his arms and accoutrements in good order, and a Serjeant or Clerk of each company is required at the end of one hour after the time appointed for the meeting of the company or battalion, to call over the muster roll of the company, noting those who are absent, and on that day shall make return in writing to the Captain or Commanding Officer then present, of such absentees, and all persons so absent at the time of calling over the roll, or shall depart from the parade before duly discharged, shall be liable to the fines hereafter mentioned.

*And be it further enabled by the authority aforesaid,* That if any Commissioned Officer shall neglect or refuse to attend on any of the days appointed for exercise, in companies as aforesaid, (unless prevented by sickness or some other unavoidable accident) such Commissioned Officer shall forfeit and pay the sum of Ten Shillings per day, and any Non-Commissioned Officer or Private, and all enrolled persons, so refusing or neglecting, (excepting as before excepted) shall forfeit and pay the sum of Five Shillings per day; and if on a field day, or meeting in battalion, then, if a Field Officer, he shall forfeit and pay the sum of Five Pounds per day, and a Commissioned Officer, under that rank, the sum of Fifteen Shillings per day; and if a Non-Commissioned Officer or Private, and enrolled person, refusing to meet and exercise, the sum of Seven Shillings and Six Pence, per day, (excepting as before excepted) the names and surnames of all which persons, so incurring the said fines and penalties (except such as may have paid the same into the hands of the Captain or Commanding Officer of the company) shall be duly returned by the Captain or Commanding Officer of each company, under his hand, together with such fines as he has received to the Colonels of the battalions respectively on each field day, which said Colonel or Commanding Officers of battalions, shall, on receipt of such fines and returns, forthwith transmit the same to the Lieutenant of the County, and the said Lieutenant shall, immediately after the said returns are respectively made to him, cause the same to be respectively recovered, before one Justice of the Peace, nearest the place where the delinquents do respectively reside, as debts under Forty Shillings are by Law directed to be recovered; and the said Lieutenant shall, twice in each year, transmit the said fines, when collected, into the hands of the County Treasurer, who shall pay the same into the hands of the State Treasurer, for the use of the State.

*And be it further enabled by the authority aforesaid,* That the master or mistress of any apprentice, and the father or mother of any minor, who shall refuse or neglect to attend as aforesaid, being in the service of his father or mother, master or mistress, shall be accountable for the fine or fines so incurred by such minor or apprentice.

*And*

*And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Executive Council, in case of invasion or rebellion within this State, or in case the assistance of the Militia of this State shall be requested by Congress to assist the Continental Army in this or any of the adjoining States, to call into actual service such part of the Militia by Classes as aforesaid, as to them shall seem necessary, the first draft to be composed of the Class number One of each company, and in case the first draft shall not be sufficient for the exigency, then the Class number Two shall be drawn, and so on by Classes from time to time as occasion may require: And to the end that each particular draft may be suitably officered, the following order is hereby directed and enjoined, that is to say.—For the first draft. The Captain of the first company, the First Lieutenant of the second company, the Second Lieutenant of the third company, and the Ensign of the fourth company. For the second draft. The Captain of the second company, the First Lieutenant of the first company, the Second Lieutenant of the fourth company, and the Ensign of the third company. For the third draft. The Captain of the third company, the First Lieutenant of the fourth company, the Second Lieutenant of the first company, and the Ensign of the second company. For the fourth draft. The fourth Captain, the First Lieutenant of the third company, the Second Lieutenant of the second company, and the Ensign of the first company. For the fifth draft. The fifth Captain, the First Lieutenant of the sixth company, the Second Lieutenant of the seventh company, and the Ensign of the eighth company. For the sixth draft. The sixth Captain, the First Lieutenant of the fifth company, the Second Lieutenant of the eighth company, and the Ensign of the seventh company. For the seventh draft. The Captain of the seventh company, the First Lieutenant of the eighth company, the Second Lieutenant of the fifth company, and the Ensign of the sixth company. For the eighth draft. The Captain of the eighth company, the First Lieutenant of the seventh company, the Second Lieutenant of the sixth company, and the Ensign of the fifth company. Non-commissioned Officers to take their tour of duty with the Commissioned Officers. And the Field Officers of battalions in the City of Philadelphia, and in each County of the State, shall be divided in like manner, and each Class to be considered as detachments from different corps, liable to serve two months, and to be relieved by the Class next in numerical order, the relief to arrive at least two days before the expiration of the term of the Class to be relieved, but nothing herein contained shall prevent the Supreme Executive Council from employing, or calling out one half of any battalion, where it may be convenient, or one half of any company, without respect to this rule, whenever the exigency is too sudden to allow the assembling the scattered Militia, which compose the particular Classes: And the Militia in actual service shall receive the same pay and rations as Continental troops, their pay to commence two days before their marching, and receive pay and rations at the rate of twenty miles per day, till they return home.

*Provided always, and be it further enacted by the authority aforesaid,* That if after the regulation aforesaid, it should so happen, that substitutes cannot be found for all the enrolled Militia upon the said limited drafts, then and in such case each and every of the persons who cannot yield their personal service as aforesaid, nor find substitutes, shall pay such sum or sums of money as each of the substitutes included in the said drafts will amount unto upon an average, within each respective battalion. *Provided also,* That no Militia-Man having personally, or by substitute, served in the Militia, shall be obliged to serve again until by rotation it comes to his turn.

*Provided always, and be it further enacted by the authority aforesaid,* That no officer serving in the Militia, when called out into actual service, shall sit in any Court-Martial upon the trial of any officer or soldier serving in any of the Continental forces; nor shall any officer serving in any of the Continental forces or other troops, in any other of the United States, sit in any Court-Martial upon the trial of any officer or private man serving in the Militia of this State.

*And be it further enacted by the authority aforesaid,* That when any part or parts of the Militia shall be called into actual service, every person enrolled as aforesaid, who is not an officer, shall have it in his choice either to serve in person or to find a sufficient person for a substitute, which said substitute shall be approved of by the Lieutenant, Sub-Lieutenant, or by one of the Field Officers of the battalion to which he belongs; and if an officer, he shall find as a substitute an officer of equal rank to be approved of by the Lieutenant of the County: But if any person shall neglect or refuse to serve, or find such sufficient substitute in his place, within three days after notice given to him, the Lieutenant or Sub-Lieutenant of the County nearest to where such delinquent resides, shall, and he is hereby required to provide, hire or procure, on as reasonable terms as may be, a substitute for such person for refusing or neglecting, and to charge such sum or sums, together with reasonable expences for procuring the same, to such delinquent, to be recovered by distress and sale of his goods and chattels, lands and tenements, by warrant under the hands and seals of any two Justices of the Peace of the County where such person resides; and if such delinquent be unmarried, then the said money to be recovered against him in the same manner as is directed by the Laws of this State in cases of debts under Five Pounds.

*Provided always,* That if any person or persons shall think him, her or themselves aggrieved in the seizure of his, her or their lands and tenements, he, she or they may enter an appeal before the Justices to the next Court of Common Pleas for the County, and on the party's giving sufficient security within six days next after any lands and tenements shall be seized or distrained as aforesaid, to prosecute such appeal with effect, the Justices shall receive the same and stay further process: And the said Justices shall return every such appeal on the first day of the next term, and the Court shall direct a trial by a jury of the County as in other cases of debt, whole verdict shall be final and conclusive; and except in extraordinary cases, of which the Court shall be judge, all such appeals shall be tried at the term to which such returns shall be made; any law, custom or usage to the contrary notwithstanding.

*And*



1777. *And be it further enacted by the authority aforesaid,* That arms and accoutrements sufficient for two Classes in each company shall be provided, at the expence of the State, as soon as convenient, by the Lieutenant of the City of Philadelphia, and of the several Counties of this State; and shall be in the care, and under the direction of the said Lieutenants respectively; and marked with the name of the County and the number of the battalion to which they belong.

*And be it further enacted by the authority aforesaid,* That if any person or persons shall sell, or knowingly buy, take in exchange, conceal, or otherwise receive, contrary to the true intent and meaning of this Act, any arms or accoutrements belonging to this State, on any account or pretence whatsoever, the person so offending, being convicted thereof, before one or more Justice or Justices of the Peace of the City or County where such offence shall be committed, shall forfeit and pay for every such offence treble the value of such arms or accoutrements, to be ascertained by the said Justice or Justices, and levied by distress and sale of the offender's goods and chattels, by the Justice or Justices before whom such offender shall be convicted, returning the overplus (if any) on demand, to such offender, and for want of such distress, shall commit such offender to the common gaol of the County, there to remain without bail or main-prize for any term not exceeding three months, unless such money is sooner paid.

*And be it further enacted by the authority aforesaid,* That the Commissioned Officers of each company shall appoint four Serjeants, four Corporals, one Drummer and one Fifer, for their respective companies. And all persons who have heretofore been officers in the Militia under the late Association, if not re-elected, shall deliver up their arms, accoutrements, drums, fises and colours, if paid for by the Public, to the Lieutenant of the County aforesaid, or unto the nearest Sub-Lieutenant; and the Lieutenant of the City of Philadelphia, and the Lieutenants of the several Counties respectively, are hereby authorized to draw on the State Treasury for the purchase of such drums, fises and colours, as may afterwards be wanting to supply the companies in the City and Counties respectively.

*And be it further enacted by the authority aforesaid,* That the Field Officers of each battalion in this State, shall constitute and appoint to their respective battalion, one Quarter-Master, one Adjutant, one Serjeant-Major, and one Drum and one Fife-Major, which Serjeant-Major, and Drum and Fife-Major, shall be persons experienced in the duties of their respective offices.

*And be it further enacted by the authority aforesaid,* That no Militia-Man shall leave the company to which he belongs, or join any other, under the penalty of Three Pounds, to be recovered before the Justice of the Peace of the County, unless in case of removing to some other District within this or any other State, and in such case he shall apply to the Commander of such company, who shall give him a certificate of his being discharged, and if the said Militia-Man had been in actual service shall also certify the time thereof, and how long he had continued therein.

*And be it further enacted by the authority aforesaid,* That the Lieutenant, or in his absence, the nearest two Sub-Lieutenants in the City and Counties respectively, shall cause the Constable or some other suitable person of the several Townships, Boroughs, Wards or Districts, within their respective jurisdictions, to make true lists annually of all male white persons between the ages aforesaid, usually residing in their respective Townships, Boroughs, Wards or Districts, in order that such as shall then be above the age of fifty-three years, or otherwise disqualified, may be discharged, and that such as are arrived to proper age, or may have within the said year become residents, may be enrolled; and the Constable shall be allowed Five Shillings only for each day he shall be faithfully employed in obtaining and returning a list of the persons of his Township, to be paid by the County Treasurer respectively, out of the monies in his hands belonging to the State.

*And be it further enacted by the authority aforesaid,* That no person serving as a substitute for another shall thereby be excused from serving in his own turn.

*And be it further enacted by the authority aforesaid,* That if any Militia-Man when called into actual service shall absent himself or desert from the company, battalion or troop to which he belongs, the person or persons so offending shall forfeit and pay a sum equal to two months pay, and if an officer shall be cashiered.

*And*

*And be it further enacted by the authority aforesaid,* That the Lieutenant, with one or <sup>1777.</sup> more of the said Sub-Lieutenants, together with any one Justice of the Peace, or any two or more Sub-Lieutenants, together with any two Justices of the Peace, shall meet in the City and the several Counties from time to time, as often as they shall find necessary, for the due execution of this Act, and one of the said meetings in every year shall be on the last Monday in the month of July, and one other of the said meetings shall be on the third Monday in the month of December.

*And be it further enacted by the authority aforesaid,* That the said Lieutenant of the City, and the said Lieutenants for the Counties respectively, shall have and receive the sum of Fifteen Shillings per day each for their trouble, and the Sub-Lieutenants of the said City and Counties respectively, shall have and receive the sum of Twelve Shillings per day each for their trouble, for every day in which they shall be employed, in doing and performing the respective duties required of them by this Act, which said sum or sums of money shall be respectively paid unto them out of the State Treasury.

And upon any draft of part of the Militia for actual service, it should happen to fall to the lot of any minor or apprentice, to be so drafted, and the said minor or apprentice should neglect or refuse to go, and also the parent, or master or mistress, refuse or neglect to find a substitute in his stead, and a substitute or substitutes having been found agreeable to the directions of this Act, it is hereby enacted and declared, That the father or mother of such minor, and the master or mistress of such apprentice, shall be liable to the payment of such sum or sums of money as it shall cost to procure such substitute or substitutes: And also in case such substitute or substitutes cannot be obtained, then to pay all such fines or sums of money as are imposed by this Act on such minor or apprentice.

*And be it further enacted by the authority aforesaid,* That if any parent, guardian, master or mistress, of any person between the ages of eighteen and twenty-one years, or of any other person made liable to serve in the Militia by this Act, shall think him or herself aggrieved, by any of the rates, fines, or sum or sums of money agreed for in the procuring of substitutes (and for the redress of which, no express provision is already made by this Act) he, she, or they may appeal to the Lieutenants and Justices aforesaid, on the days and times before-mentioned, who are hereby required and enjoined to give attendance from day to day, as long as may be necessary, at such convenient place or places as they shall appoint, of which days and places of meeting, they shall cause due notice to be given to the inhabitants, and then and there, the said Lieutenants and Justices shall hear all such appeals as may be made to them, and shall moderate or remit the said rates and fines as to them shall appear just and necessary, in consideration of inability of body or estate only.

*And be it further enacted by the authority aforesaid,* That on the death, removal, or other incapacity of any of the Lieutenants of the City and Counties respectively, the Sub-Lieutenants shall continue to act, and exercise all the authorities by this Act committed to them, until the General Assembly and the Supreme Executive Council shall have appointed and commissioned another Lieutenant or Lieutenants in his or their room or stead.

*And be it further enacted by the authority aforesaid,* That all the Lieutenants and Sub-Lieutenants to be appointed by virtue of this Act, shall regularly once in every six months lay their accounts of the money received and expended by them before the General Assembly, or any Committee appointed by them for that purpose.

*And be it further enacted by the authority aforesaid,* That if any Commissioned Officer; Non-commissioned Officer or Private Militia-Man of this State, who has, or hereafter may lose a limb in any engagement, in the service of this State, or in the service of the United States of America, or be so disabled as to render him incapable of getting a livelihood, shall receive during life, or the continuation of such disability, a pension, not more than one half of the monthly pay, from and after the pay as an officer or private Militia-Man ceases; still subject to be lowered, so as to be made adequate to the necessity of such disabled officer or private Militia-Man, by the judgment of the Orphans Court of the County where such disabled officer or private Militia-Man shall dwell or reside. And every officer or private, disabled as aforesaid, shall, before he be legally entitled to the pension above-mentioned, produce a certificate from the Commanding Officer, who was in the same engagement in which he was wounded, or from some other officer of the same corps, or the Surgeon that attended him: And upon such disabled officer, non-commissioned officer or private Militia-Man's producing such certificate as aforesaid to the Orphans Court of the

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1777. County where such disabled officer, or private Militia-Man shall dwell or reside, the said Court is hereby enjoined and required to give every such officer or private an order on the Lieutenant of the said County for such sum or sums of money from time to time as to them shall appear just and necessary: And the said Lieutenant is hereby enjoined and required to accept and pay the said order, to such officer or private; and the said Lieutenant shall draw on the State Treasurer as often as he shall have occasion for such sum or sums of money as he shall make appear to the President and Council to be necessary for carrying this Law into execution.

*And be it further enacted by the authority aforesaid,* That if any officer, Non-commissioned officer or private Militia-Man residing in this State, having a family, shall be killed or die of his wounds received in the service of this, or the United States, a certificate from some officer, (who was in the same engagement in which he was so killed or wounded, and died of his wounds) being produced to the Orphans Court, and also a certificate from the Overseers of the Poor, and two other reputable Freeholders of the Township, Borough, Ward or District, where the family of such deceased officer, Non-commissioned officer or private Militia-Man shall dwell or reside at that time, setting forth the particular circumstances of such family, the age or ages of the child or children and the necessity of granting them some support, the said Orphans Court when possessed of the certificates aforesaid, are hereby authorized to give an order in favour of such family, upon the Lieutenant of the County, for such sum of money as they may think just and necessary for the support of such family from time to time. Provided always, that the support granted do not exceed half the pay that such officer, Non-commissioned officer or private Militia-Man was entitled to at the time of such killing or wounding.

*Be it enacted by the authority aforesaid,* That if any Lieutenant, Sub-Lieutenant, Officer of the Militia or Constable, shall be found guilty of any fraud, or willful partiality to any person, in the carrying this Act into execution, or shall refuse or neglect to do and perform, all and singular the duties (other than military duties) required of him or them respectively by this Act, and shall be duly convicted thereof, by a Jury of his Country, before any Court of Record in this State, such Lieutenant, Sub-Lieutenant, Militia Officer, or Constable, shall for every such offence be fined at the discretion of such Court, in any sum not exceeding fifty pounds.

*And be it further enacted by the authority aforesaid,* That if any suit or suits shall be brought or commenced against any person, or persons, for any thing done in pursuance of this Act, the action shall be laid in the County where the causes of such action did arise, and not elsewhere. And the defendant or defendants in such action or actions to be brought, may plead the general issue, and give this Act and the special matter in evidence; and if the Jury shall find for the defendant or defendants in such action or actions, or if the plaintiff or plaintiffs shall be non-suited or discontinue his or their action or actions, after the defendant or defendants shall have appeared, or if upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and have the like remedy for the same, as any defendant or defendants hath or have in other cases to recover costs by Law.

*And be it further enacted by the authority aforesaid,* That the following Rules and Regulations shall be the Rules and Regulations by which the Militia shall be governed.

I. If any Commissioned Officer make use of any profane oath or execration when on duty, he shall forfeit and pay for each and every such offence, the sum of Five Shillings, and if a Non-commissioned Officer or Private man be thus guilty of cursing or swearing, he shall forfeit and pay for each and every such offence the sum of One Shilling.

II. Every Militia-Man, who, on any of the days of exercise, shall refuse to obey the lawful commands of his superior officer, may be suspended from doing duty on that day; and upon conviction before a Court-Martial, shall be fined, if a Commissioned Officer, in a sum not exceeding Three Pounds, and if a Non-commissioned Officer or Private, in any sum not exceeding Twenty Shillings.

III. Any officer or private man, who shall begin, excite, cause, join in, or promote any mutiny or disturbance in the battalion, troop or company to which he belongs, or in any other battalion, troop or company, shall be fined or censured according to the nature of the offence, by a General or Regimental Court-Martial.

IV. Any officer or private man, who shall strike his superior officer, or draw, or offer to draw, or shall lift up any weapon, or offer any violence against him, being in the execution of his office, shall upon a conviction before a General or Regimental Court-Martial, be fined in a sum not exceeding Five Pounds.

V. Any commanding or other officer, who shall strike his inferior officer or private man, when on duty, upon conviction before a General Court-Martial, shall be fined in any sum not less than Five Pounds, and not exceeding Ten Pounds.

VI. Any officer or private man, who shall make use of insolent, provoking, or indecent language while on duty, shall suffer such censure or fine as shall be inflicted by a General or Regimental Court-Martial, according to the nature of the offence.

VII.



VII. If any officer or private man shall think himself injured by his Colonel or the commanding officer of the battalion, and shall, upon due application made to him be refused redress, he may complain to the Lieutenant of the County, who shall summon a General Court-Martial that justice may be done. 1777.

VIII. If any inferior officer or private man, shall think himself injured by his Captain, or other superior officer in the battalion, troop or company to which he belongs, he may complain to the Commanding Officer of the battalion, who shall summon a Regimental Court-Martial for the doing justice, according to the nature of the case.

IX. Any officer or private man found drunk when under arms, shall be suspended from doing duty in the battalion, company or troop on that day, and be fined at the discretion of a General or Regimental Court-Martial.

X. Whatever sentinel shall be found sleeping or drunk on his post, or shall leave it before he is regularly relieved, shall be fined at the discretion of a Court-Martial.

XI. Whatever commissioned officer shall be convicted before a General Court-Martial of behaving in a scandalous or infamous manner, unbecoming the character of an officer and a gentleman, shall be cashiered or fined at the discretion of a Court-Martial.

XII. All disorders and neglects which officers or private men may be guilty of, to the prejudice of the good order and military discipline of the Militia of this State, are to be taken cognizance of by a General or Regimental Court-Martial, according to the nature and degree of the offence, and such officers or private men shall be fined or censured at the discretion of a Court-Martial.

XIII. Every General Court-Martial shall consist of thirteen members, six of whom shall be Commissioned Officers under the rank of a Field Officer, and six Court-Martial Men, who shall be drawn by lot out of the whole number of the battalion, and these twelve are to choose a President, who shall be a Field Officer.

XIV. Every Regimental Court-Martial shall be composed of seven members, three officers, three Court Martial Men, and a President, who is to be a Captain, and to be chosen by the six.

XV. In all Courts-Martial not less than two thirds of the members must agree in every sentence for inflicting any punishment, or otherwise he shall be acquitted.

XVI. The President of each and every Court-Martial, whether General or Regimental, shall require all witnesses, in order to the trial of offenders, to declare on oath or affirmation, that the evidence they shall give is the truth, the whole truth, and nothing but the truth; and the members of all such Courts shall take an oath or affirmation, which the President is required to administer to the other members, and the next in rank is required to administer to him, that they will give judgment with impartiality.

XVII. All members of the Militia, called as witnesses in any case before a Court-Martial, who shall refuse to attend and give evidence, shall be censured or fined at the discretion of the Court.

XVIII. No Officer or Private Man being charged with transgressing these Rules, shall be suffered to do duty in the battalion, company or troop to which he belongs, until he has had his trial before a Court-Martial; and every person so charged shall be tried as soon as a Court-Martial can be conveniently assembled.

XIX. The Officers and Private Men of every company of Artillery, or other company, troop or party that is or shall be annexed to any battalion, shall be subject to the command of the Colonel or Commanding Officer of said battalion, and the Officers shall sit as members of Courts-Martial in the same manner as the Officers of any other company.

XX. No penalty shall be inflicted at the discretion of a Court-Martial, other than degrading, cashiering or fining; the fines for the Officers not to exceed Ten Pounds, and the fines for a non-commissioned Officer or Private Man not to exceed Five Pounds for one fault.

XXI. No company or battalion shall meet at a tavern on any of the days of exercise; nor shall march to any tavern before they are discharged.

XXII. The Militia on days of exercise may be detained under arms, on duty in the field, any time not exceeding six hours, provided they are not kept above three hours under arms at any one time, without allowing them a proper time to refresh themselves.

XXIII.

1777. XXIII. Adjutants, Drummers and Fifers shall receive the following pay for every day of service they attend their respective battalions or companies, by order of the Commanding Officer.

An Adjutant, Ten Shillings, a Drummer, Three Shillings, a Fifer Three Shillings. The Drum-Major and Fife-Major of every battalion, shall receive each a sum not exceeding Twenty Shillings per week, and to be continued in pay as long as the Colonels of the several battalions shall think necessary; and it is required, that such Drum-Majors and Fife-Majors, when not in service on days of exercise, shall be diligently employed in instructing a proper number of persons for Drummers and Fifers of the several battalions.

XXIV. The Lieutenant of the County for the time being, shall have full power of pardoning or mitigating any censures or penalties ordered to be inflicted for the breach of any of these articles by any General Court-Martial, and every offender convicted as aforesaid by any Regimental Court-Martial, may be pardoned, or have his penalties mitigated by the Colonel or Commanding Officer of the battalion, excepting only where such censures or penalties are directed as satisfaction for injuries received by one officer or private man from another.

XXV. Upon the determination of any point by a Regimental Court-Martial, if the officer or private man concerned on either side, thinks himself still aggrieved, he may appeal to a General Court-Martial, but if upon a second hearing the appeal appears groundless and vexatious, the person so appealing shall be censured at the discretion of the said General Court.

XXVI. Upon the death, resignation, promotion, or other removal of a Field Officer, or any other officer or Court-Martial Man from a battalion, troop or company, such vacancy is to be filled by the person such battalion troop or company shall elect.

XXVII. No officer or private man shall be tried a second time for the same offence, except in case of appeal.

XXVIII. All fines that shall be collected according to this Act, by direction of any Court-Martial, and not otherwise appropriated, shall be paid into the hands of the Clerk of the company to which the offenders belong, who shall account for the same to the Captain, to be applied to the purchasing powder and ball, to exercise the men at proper times at shooting at marks, and for prizes to the best marksmen.

The fines that shall be incurred in consequence of the breach of any of the above Regulations shall be paid (if incurred by a Field Officer) to the Clerk of that company whose Captain has the first rank in the battalion, or (if incurred by any other Officer or Private) to the Clerk of the company to which they respectively belong, within three weeks after they become due, but in case of neglect or refusal to pay any of the said fines, then in such case, upon application made by the Clerk to whom such fine or fines ought to have been paid, it shall and may be lawful for any one Justice of the Peace of the County (if the fine does not exceed Five Pounds) or two Justices (if above Five Pounds) by warrant under his or their hands and seals, to levy such fine or fines respectively on the offender's goods and chattels, and otherwise proceed in recovering the same as is by Law directed in case of debts not exceeding Five Pounds, and when recovered the said Justice or Justices are required to pay such fines into the hands of the Clerk who applied for the recovery. The fines so recovered from the Field Officers to be disposed of as the Officers of the battalion shall think proper, and those recovered from the other Officers and Privates to be disposed of as is herein before directed.

J O H N B A Y A R D, S P E A K E R.

Passed in General Assembly, March 17, 1777.

J O H N M O R R I S, Junior, C L E R K of the General Assembly.

### *An ACT to increase the Wages of Assembly-Men.*

WHEREAS in and by a certain Act of the General Assembly of the Province of Pennsylvania, passed in the fourth year of the reign of the late Queen Ann, intitled "An Act to ascertain the number of Members of Assembly, and to regulate the Elections," it was declared and enacted, That every Member chosen or to be chosen to serve in Assembly should

See in general

## CHAPTER DCCLVIII.

A SUPPLEMENT TO THE ACT, ENTITLED "AN ACT DIRECTING THE MODE OF COLLECTING THE FINES IMPOSED ON PERSONS WHO DID NOT MEET AND EXERCISE IN ORDER TO LEARN THE ART MILITARY ACCORDING TO THE RESOLVES OF THE LATE ASSEMBLY OF PENNSYLVANIA." <sup>1</sup>

(Section I, P. L.) Whereas for the speedy execution of the good purposes to which the said resolves of the late and the said act of the present general assembly of this state were agreed upon and passed several certain days were in and by the same act to which this is a supplement expressly and peremptorily stated and fixed for the doing of several matters and things necessary to be done in order to obtain the end and effect of the said resolves: That is to say, the twenty-eighth day of February last was fixed for the day of meeting of the commissioners of the several counties of this state and appointing proper persons to make returns in writing for every ward, township and district where such returns had not been already made of the names and surnames of every male white person who at the time of passing the said resolves were capable of bearing arms and between the ages of sixteen and fifty years (except of such persons as by the said act were excepted). The eleventh and twenty-seventh days of March then next following were fixed for the days on which the persons appointed by the commissioners should have brought in their lists and made their returns to the commissioners. The twentieth day of the same month of March was fixed for the day on or before which the captains or commanding officers of companies in the militia should return to their respective colonels lists of the associators, and the twenty-seventh day of the same month for the day on or before which the said colonels should return duplicates of the said company lists unto the said commissioners. The tenth day of April then next following was fixed for the day of meeting of

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<sup>1</sup> Passed February 14, 1777, Chapter 742.



all or any four of the assessors of the city of Philadelphia and of the several counties within this state respectively, together with one or more of the commissioners and to appoint collectors of the said fines; and the twelfth day of May then next following was fixed for the return day of the collectors and the appeal day before the commissioners.

(Section II, P. L.) And whereas in several of the counties of this state the commissioners have not entered upon the execution of the aforesaid act, and in others a beginning thereof is made, but the making of the proper returns, appointing collectors of the said fines and several other matters by the said act of general assembly directed to be done on a certain day and within a limited time (which is since expired) remain undone to this day, to the great hurt of the public cause and the particular damage of many of the good subjects of this state for whose relief the said fines and the act of assembly for collecting the same were intended and made:

For remedying whereof:

[Section I] Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That the commissioners of the city of Philadelphia and of the several counties of this state or any two of them in the said city and in each county shall, within the space of thirty days from the publication of this act or as soon as possible afterwards, meet at the court-house of the said city or county for which they are commissioners, or at any other place in the said city or county where it shall seem most convenient to them, and make diligent and strict inquiry of and ascertain what proceedings have been had in the said city or counties respectively upon the aforesaid resolves of the late assembly of Pennsylvania, or in pursuance of the said act of general assembly to which this is a supplement, and wherever they shall find that the returns of persons capable of bearing arms and within the description of the said act have not already been made they shall immediately proceed to appoint a proper person for each ward, township or district to make such returns in manner and form as by the said act is directed, and shall fix a day or days on

which the persons so to be appointed shall make their returns to them the said commissioners not exceeding twenty days from the date of the appointment. And that the captains or commanding officers of companies of the militia who have not made out lists of the persons belonging to their companies and the colonels who have not made duplicates thereof and returned the same shall and they are hereby required according to the best of their knowledge and ability to make and return such lists and duplicates as by the said act is directed within the space of thirty days from the publication of this act. And that the commissioners, assessors, collectors of fines and all other persons whosoever who by the aforesaid act of assembly to which this is a supplement or within the true meaning and intent thereof are enjoined and required to do any act, matter or thing relative to the end and purpose of assessing, levying and collecting the fines imposed by the said resolves of the late assembly shall do and perform each of them his duty as far as it remains yet undone within such time as the county commissioners or assessors shall from time to time fix upon, and give notice thereof in the same line and order of the whole business through the different stages thereof from the first meeting of the commissioners to the collecting and paying into the treasury the said fines as by the said act to which this is a supplement are marked out and directed to be followed notwithstanding that the several days and times in and by the aforesaid act of assembly fixed and limited are past and expired.

[Section III, P. L.) And in order to provide against any future delays and obstructions in collecting the said fines:

[Section II] Be it further enacted by the authority aforesaid, That if it shall happen that in the city of Philadelphia or in any of the counties of this state the commissioners for the time being or any two of them by reason of sickness or of being out of the said city or county in the service of the public or for any other reason whatsoever shall or will not attend to the duties hereby enjoined them, the sheriff of the said city or county where such commissioner or commissioners shall be wanting shall under the penalty of one hundred pounds without any delay make out a summons under his hand and seal directed to some

one or two of the freeholders of his city or county who have heretofore been in the office of commissioners or in any other office of public trust depending upon the choice of the people or their representatives, commanding him or them to do and perform the several acts, matters and things which by this act and the act to which it is a supplement are directed to be done by the commissioner or commissioners who cannot or will not attend as the case shall require; and the person or persons so summoned by the sheriff under the authority of this act shall obey his summons and proceed to do the duties of a commissioner or commissioners for the purpose of executing the said resolves and act of assembly under the same penalties as by the said act are imposed on commissioners actually in office who refuse to act; and if the person or persons so summoned by the sheriff as aforesaid shall refuse or neglect to do the duties of commissioner or commissioners for the purpose required of him or them, the sheriff shall in like manner summon another or others as often as the case shall require until two persons shall be willing and active in doing the duties required of commissioners by this act and the act to which it is a supplement. And that the commissioners, assessors, collectors and other persons who have refused or neglected to expedite the business and perform the duties enjoined them by the aforesaid act within the time thereby limited shall, if they again refuse or neglect to do and expedite within the time limited by this act the same business and duty, they shall [sic] forfeit and pay double the fines and penalties imposed by the act of assembly to which this is a supplement.

[Section III] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the former county commissioners and assessors who are now out of office and have not yet delivered to the present commissioners and assessors all the books, minutes, accounts and treasurer's bonds belonging to the commissioners and assessors shall within the space of three days after demand made deliver the same to the commissioners and assessors for the time being under the penalty of five hundred pounds.

[Section IV] (Section V, P. L.) And be it further enacted,



That the commissioners and assessors of the several counties shall be allowed twelve shillings for each day for their service aforesaid, and that the persons to be appointed for making and returning the lists of all the persons capable of bearing arms in each township or district, and the collectors of the fines if they are employed in another township than that in which they dwell, shall have such reasonable allowance for their extraordinary trouble as the county commissioners or the persons who shall act instead of the commissioners shall think proper, and ascertain over and besides the wages limited by the act to which this is a supplement.

Passed June 18, 1777. See the note to the Act of Assembly passed February 14, 1777, Chapter 742.

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## CHAPTER DCCLIX.

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### AN ACT TO RE-ESTABLISH THE ANCIENT CORPORATION OF THE BURGESSES AND INHABITANTS OF THE BOROUGH OF LANCASTER IN THE COUNTY OF LANCASTER.

(Section I, P. L.) Whereas the said corporation, deriving its existence and freedoms from the authority of the crown of Great Britain, became upon the declaration of the independence of this state from that crown immediately dissolved:

(Section II, P. L.) And whereas it has been made to appear to the legislature of this state that it would be most conducive to the good government of the said borough if its ancient frame might under the authority of the people be restored to them, and their officers who of course have discontinued themselves might be reinstated by the law of the land and have perpetual succession, so that the inhabitants of the said borough could go on with their local government in the same way as they used to do under the charter of the late King or the governor of Pennsylvania:

[Section I] Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of

lution of Assembly passed) June 20, 1839, P. L. 681; (the two Acts of Assembly passed) June 21, 1839, P. L. 373, 376; July 2, 1839, P. L. 581; (the Resolution of Assembly passed) January 31, 1840, P. L. 703; (the Resolution of Assembly passed) May 19, 1840, P. L. 747; March 12, 1841, P. L. 78; February 10, 1843, P. L. 18; May 6, 1844, P. L. 564; (the Resolution of Assembly passed) January 6, 1845, P. L. 545; January 4, 1847, P. L. 27; March 15, 1847, P. L. 366; February 14, 1848, P. L. 54; March 6, 1848, P. L. 104; March 8, 1848, P. L. 119; March 18, 1848, P. L. 209; March 24, 1848, P. L. 235; April 5, 1848, P. L. 337; April 10, 1848, P. L. 443; February 6, 1849, P. L. 40; February 19, 1849, P. L. 74; April 5, 1849, P. L. 424; January 22, 1850, P. L. 16; April 6, 1850, P. L. 400; May 8, 1850, P. L. 713; May 13, 1850, P. L. 749; April 12, 1851, P. L. 464; February 6, 1852, P. L. 37; March 30, 1852, P. L. 207; April 1, 1852, P. L. 219; April 6, 1852, P. L. 265; April 18, 1853, P. L. 530, 565; April 13, 1854, P. L. 352; April 21, 1854, P. L. 446; May 5, 1854, P. L. 584; March 15, 1855, P. L. 81; March 16, 1855, P. L. 92; May 25, 1855, P. L. 473; February 12, 1856, P. L. 40; April 21, 1856, P. L. 485; January 31, 1857, P. L. 9; April 7, 1858, P. L. 220, March 26, 1860, P. L. 270; March 31, 1860, P. L. 475; April 2, 1860, P. L. 556, 569; March 16, 1861, P. L. 132; March 20, 1863, P. L. 173; March 16, 1864, P. L. 16; February 27, 1865, P. L. 74; March 16, 1866, P. L. 237; April 4, 1866, P. L. 469; January 24, 1867, P. L. 111; February 13, 1867, P. L. 158; April 5, 1867, P. L. 783; April 8, 1867, P. L. 905; April 10, 1867, P. L. 995; February 21, 1868, P. L. 199; March 16, 1868, P. L. 327; April 13, 1868, P. L. 876; April 14, 1868, P. L. 1094; February 11, 1869, P. L. 141; February 26, 1869, P. L. 285; March 12, 1869, P. L. 322; March 20, 1869, P. L. 462; April 17, 1869, P. L. 1144; January 25, 1870, P. L. 89; March 14, 1870, P. L. 432; March 27, 1872, P. L. 595; March 28, 1872, P. L. 616; April 9, 1872, P. L. 1075; March 19, 1873, P. L. 315; March 28, 1873, P. L. 449; April 10, 1873, P. L. 734; April 18, 1873, P. L. 811.

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## CHAPTER DCCLX.

Sec in general

A SUPPLEMENT TO THE ACT, ENTITLED "AN ACT TO REGULATE THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA." <sup>1</sup>

(Section I, P. L.) Whereas by the said act it is provided that each of the field officers to be elected by the militia of this state shall be a freeholder, and it may happen that in some of the divisions or districts out of which the several battalions in the city of Philadelphia and the several counties of this state are or shall be formed the greater part of the electors do incline to serve under the command of a man of superior merit, knowledge of military affairs, prudence and courage who is no freeholder and it is very suitable to the genius and the general maxims of a

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Passed March 17, 1777, Chapter 750.

141. Pa.—*General Assembly, Philadelphia; Statutes, Mitchell and Flanders, Vol. 9, 1903; Act, June 19, 1777, pp. 131-136, Ch. DCCLX.*

free state especially in the military department, to prefer its officers rather on the scale of their merits than of their estates:

[Section I] Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met and by the authority of the same, That from and after the publication of this act it shall be lawful to and for the inhabitants of each division or district in the said city and counties respectively at their elections of one or more field officer or officers to elect any person being a freeman in whose abilities of commanding them they shall put the highest confidence and trust for a field-officer whether he be a freeholder or not.

[Section II] (Section II, P. L.) And be it further enacted by the authority aforesaid, That the colonel or commanding officer of every battalion which has not been in due time arranged and exercised shall in lieu of the several days which by the said act of assembly for exercising the militia of this state in battalions or companies have been fixed and not observed and kept, fix, observe and keep for the purposes aforesaid a number of days equal to those that have been so lost and are elapsed as aforesaid; and that all persons who shall accordingly meet and exercise shall be and they are hereby acquitted of the fines incurred by them for not meeting and exercising on the days appointed by the aforesaid act to which this is a supplement.

[Section III] (Section III, P. L.) And be it enacted by the authority aforesaid, That any militia-man who on the day of exercise of the battalion or company shall be from home in actual service as a substitute for another shall not be fined as an absentee.

[Section IV] (Section IV, P. L.) And be it further enacted, That the captains in the several districts and sub-divisions shall from time to time enter into their muster-roll such persons living in their districts as have not been already entered agreeable to the said act and put them into that class into which the lot will cast them.

[Section V] (Section V, P. L.) And be it further enacted, That every officer (under the rank of a field-officer), non-commissioned officer and private having in his possession arms or accoutre-



ments who shall neglect or refuse to bring such arms and accoutrements to the place of parade on the days of exercise shall be liable to pay the same fines which by the act to which this is a supplement are imposed on officers and privates not attending on the days of exercise.

[Section VI] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That all and every the late officers in the militia of this state who have not been re-elected at the last election of officers and shall have in their possession any drums, colors, arms or accoutrements belonging to the battalion in which they have been officers shall deliver up the same on demand to the lieutenant or sub-lieutenant or to the commanding officer of the battalion of the district wherein he doth reside under the penalty of double the value of the articles so detained, to be recovered in a summary way as the charges for procuring substitutes in the militia are directed to be recovered in and by the act of general assembly to which this is a supplement.

[Section VII] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the field-officers of each battalion to nominate and appoint one surgeon and surgeon's mate and one chaplain to their respective battalions. And that the lieutenant and sub-lieutenants of the city and counties aforesaid shall at their discretion furnish and procure carriages for the battalions or drafts of the militia when it shall be necessary.

[Section VIII] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That the commissioned officers of each company of militia shall nominate and appoint one discreet person, who shall be called the almoner, residing in the district or sub-division out of which their company is formed to take proper care of the families of such poor militia men within their respective districts as are in actual service in their own turn and to grant them such support as their necessities may require, provided that such support do not exceed the sum of ten shillings per week for any one family. And the said officers of the company or any two of them shall make out a certificate of their nomination and appointment directed to the lieutenant of the city or county to which the company belongeth, which

certificate shall enable the person thereby appointed to draw from time to time on the lieutenant for such sum and sums of money as shall be necessary for the purpose aforesaid and he shall be liable to render an account of the moneys by him drawn for to the said lieutenants and the several lieutenants of the city and counties in this state shall lay their accounts of such their expenditures before the general assembly or a committee by them appointed for that purpose once in every six months.

(Section IX, P. L.) And whereas the fines in the said act of assembly by the fourth and fifth articles of the rules and regulations by which the militia shall be governed (which said rules and regulations are to be construed and intended as rules and regulations for the government of the militia while in training at their places of exercise and parade and not when drawn out into actual service) imposed on any officer or private who shall strike his superior officer or draw or offer to draw, or shall lift up any weapon or offer any violence against him being in the execution of his office and on any commanding or other officer who shall strike his inferior officer or a private man when on duty are not adequate to the offenses in either cases which from particular circumstances to be given in evidence to a court-martial may be aggravated or alleviated:

For remedying whereof:

[Section IX.] Be it enacted, That the officers and privates offending against either of the said recited two articles, upon conviction thereof before a court-martial shall be fined by the said court at their discretion in any sum not exceeding fifteen pounds.

[Section X] (Section X, P. L.) And be it further enacted by the authority aforesaid, That the militia of this state whilst in actual continental service shall be subject to the same rules and regulations as the continental troops are. Provided, That upon any breach, transgression or offense of a militia-man, whether officer or private, against the rules and regulations of the continental troops the cause shall be tried and determined by a court-martial of the militia of this state except for a charge of high treason upon which he shall or may be tried by such court-

martial as the commander in chief of the army or of the post or division where the offense shall be committed shall direct.

Provided always, That it shall be in the power of the president of the executive council (if he commands the said militia in person), or in case of his absence, of the commanding officer of the militia to alter, mitigate, suspend or pardon any punishment to which any militia man may be sentenced by a general court-martial, except in the said case of high treason.

[Section XI] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That the militia of the Northern Liberties of the city of Philadelphia, the district of Southwark and the townships of Moyamensing and Passyunk be and are hereby united to the city of Philadelphia [to act in conjunction with the militia of the said city] and distinct from the county of Philadelphia, that they draw lots for rank in battalion and be joined in brigade, and to act in every other matter that respects the militia law as if they were inhabitants of the said city, and to be under the jurisdiction of the lieutenant and sub-lieutenants of the city.

[Section XII] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That the lieutenants of the city of Philadelphia and of each county in this state respectively are hereby directed and empowered to employ a clerk or clerks as often as occasion may require and lay their accounts before the committee of public accounts appointed by the assembly, who are empowered to adjust and settle the same as other incidental charges are settled.

[Section XIII] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That all persons employed as post-masters, post-riders or in any other necessary business in the several post-offices within this state are hereby declared to be exempted from all militia duties directed to be performed by this act or the act to which this is a supplement anything in the said acts contained to the contrary notwithstanding.

[Section XIV] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant of the city of Philadelphia, with the assistance of the sub-lieutenants and the colonels of the several battalions of the said city and liber-



ties, shall out of the several battalions of militia take such a number as including the artillery companies already raised and-raising, shall be sufficient to compose six companies consisting of one captain, one captain lieutenant, two lieutenants and fifty privates, each of such militia-men as [may be] judged most fit for the artillery service and most inclinable thereto and as equally from the several battalions as conveniently may be consistent with the good of the service, and shall form the same into companies of the number aforesaid, which companies when formed by the lieutenants and colonels aforesaid shall elect for themselves one colonel, one lieutenant-colonel and one major and such company officers as may be wanting to complete the said companies, and shall be called the artillery battalion and be considered a corps separate from the other battalions of the militia. And the several captains thereof shall by order of their colonel determine their rank by lot and be numbered from one to six in numerical order and subject to be drawn forth into actual service in rotation by companies, according to their number in rank, number first in rank with class first of the militia and so on until all take their tour, or otherwise as the president or in his absence the vice-president of the supreme executive council shall direct.

( [Section XV] (Section XV, P. L.) And be it further enacted by the authority aforesaid, That so much of the aforesaid [act] of general assembly to which this is a supplement as is herein altered or otherwise provided for shall be and is hereby declared to be repealed and made null and void.

Passed June 19, 1777. See the note to the Act of Assembly passed March 17, 1777, Chapter 750. The act in the text was repealed by the Act of Assembly passed March 20, 1780, Chapter 902.

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## CHAPTER DCCLXI.

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AN ACT TO PROHIBIT THE SALE OF GOODS, WARES AND MERCHANDISES BY PUBLIC VENDUE AND TO REGULATE PEDDLERS AND HAWKERS IN THIS STATE.

(Section I, P. L.) Whereas the practice of selling goods, wares and merchandises by public vendue, as tending to raise the price

proper, or as the particular circumstances of the case may require.

[Section II] And be it further enacted by the authority aforesaid, That the president, vice-president and other members of the supreme executive council of this commonwealth and all persons acting by their special command in the premises shall be and are hereby fully and absolutely indemnified and saved harmless of and from all process, suits and actions that shall or may be hereafter sued, commenced, prosecuted or brought against them or any or either of them for or in respect of any of their orders or proceedings heretofore issued and had upon the recommendation of Congress, or which they shall hereafter issue and have by virtue of this act; and that no judge or officer of the supreme court or any inferior court within this commonwealth shall issue or allow of any writ of habeas corpus or other remedial writ to obstruct the proceedings of the said executive council against suspected persons in this time of imminent danger of the state.

[Section III.] Provided always, and it is hereby further enacted by the authority aforesaid, That this act shall be in force to the end of the first sitting of the next general assembly of the commonwealth and no longer.

Passed September 6, 1777. See the note to the Ordinance of the First Constitutional Convention passed September 12, 1776, Chapter 733; and the Acts of Assembly passed October 13, 1777, Chapter 766; January 2, 1778, Chapter 775; September 10, 1778, Chapter 813; December 5, 1778, Chapter 822; March 31, 1779, Chapter 836; October 10, 1779, Chapter 865; November 27, 1779, Chapter 872; March 24, 1780, Chapter 906.

See in general

## CHAPTER DCCLXIII.

AN ACT MAKING PROVISION FOR THE RELIEF OF OFFICERS, SOLDIERS, MARINES AND SEAMEN WHO IN THE COURSE OF THE PRESENT WAR, BEING IN THE SERVICE OF THE UNITED STATES OF AMERICA HAVE BEEN OR SHALL BE MAIMED OR OTHERWISE DISABLED FROM GETTING THEIR LIVELIHOOD AND SHALL BE RESIDENT IN OR BELONG TO THE STATE OF PENNSYLVANIA.

Whereas the delegates of the United States of America in Congress on the twenty-sixth day of August one thousand seven

578. Pa.—*General Assembly, Philadelphia; Statutes, Mitchell and Flanders, Vol. 9, 1903; Act, Sept. 18, 1777, pp. 140–145, Ch. DXXLXIII.*

hundred and seventy-six, on behalf of such commissioned and non-commissioned officers of the army and navy as also private soldiers, marines and seamen as in the course of the present war might lose a limb; or be otherwise so disabled as to prevent their serving in the army or navy, or getting their livelihood and might stand in need of relief, did enter into the following resolves, to-wit:

“That every commissioned officer, non-commissioned officer and private soldier who shall lose a limb in any engagement, or be so disabled in the service of the United States of America as to render him incapable afterwards of getting a livelihood, shall receive during his life, or the continuance of such disability the one-half of his monthly pay from and after the time that his pay as an officer or soldier ceases, to be paid by the committee as hereafter mentioned:

“That every commander of any ship-of-war or armed vessel, commissioned officer, warrant officer, marine or seaman belonging to the United States of America who shall lose a limb in any engagement in which no prize shall be taken, or be therein otherwise so disabled as to be rendered incapable of getting a livelihood, shall receive during his life, or the continuance of such disability the one-half of his monthly pay from and after the time that his pay as an officer, marine or seaman ceases, to be paid as hereafter mentioned; but in case a prize shall be taken at the time such loss of limb or other disability shall happen, then such sum as he may receive out of the net profits of such prize before a dividend is made of the same, agreeable to former orders of Congress, shall be considered as part of his half pay and computed accordingly.

“That every commissioned officer, non-commissioned officer and private soldier in the army, and every commander, commissioned officer, warrant officer, marine or seaman of any of the ships-of-war or armed vessels belonging to the United States of America who shall be wounded in any engagement so as to be rendered incapable of serving in the army or navy, though not totally disabled from getting a livelihood, shall receive such monthly sum towards his subsistence as shall be judged adequate by the assembly or other representative body of the state



where he belongs or resides upon application to them for that purpose, provided the same doth not exceed his half pay.

“That no commissioned officer, non-commissioned officer and private soldier in the army, commander, commissioned officer, warrant officer, marine or seaman of any of the ships of war or armed vessels belonging to the United States of America who shall be wounded or disabled as aforesaid shall be entitled to his half pay or other allowance unless he produce to the committee or officer appointed to receive the same in the state where he resides or belongs, or to the assembly or legislative body of such state, a certificate from the commanding officer who was in the same engagement in which he was so wounded, or in case of his death from some other officer in the same corps and the surgeon that attended him, or a certificate from the commander of the ship-of-war or armed vessel engaged in the action in which any officer, marine or seaman received his wound and from the surgeon who attended him, of the name of the person so wounded, his office, rank, department, regiment, company, ship-of-war or armed vessel to which he belonged, his office or rank therein, the nature of his wound, or in what action or engagement he received it.”

And the said delegates in Congress did at the same time recommend to the several assemblies or legislative bodies of the United States of America “to appoint some person or persons in their respective states who shall receive and examine all such certificates as may be presented to them and register the same in a book, and also what support is adjudged by the assembly or legislative body or their state to those whose case requires but a partial support, and also of the payment from time to time of every half pay and other allowance and of the death of such disabled person or ceasing of such allowance, and shall make a fair and regular report of the same quarterly to the secretary of Congress or board of war, where a separate record shall be kept of the same, and to cause payment to be made of all such half pay or other allowances as shall be adjudged due to the persons aforesaid on account of the United States.”

Therefore, as well in deference to the aforesaid recommendation of Congress as in justice and gratitude to such brave men

who already have or hereafter may step forth in the service of their country and in the same have been or may be so unfortunate as to come within the description of the said resolves and in order to provide for their relief:

[Section I] Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That upon the application of any officer of the army or navy, private soldier, marine or seaman, who in the course of the present war shall have lost a limb, or be otherwise so disabled as to prevent his serving in the army or navy, or getting his livelihood, made to any one of the justices of the peace in the several counties of this state for such relief as by the said resolve of Congress is provided for him, and shall produce to the said justice a certificate from the commanding officer in the same engagement, or of the ship of war or armed vessel in which he was so wounded, or in case of the death of the commander from some other officer in the same corps or ship, or from the surgeon that attended him, setting forth the name of the person so wounded, his office, rank, department, regiment, company, ship-of-war or armed vessel to which he belonged, the nature of his wound and in what action or engagement he received it, the said justice shall and he is hereby enjoined and required to call to his assistance two reputable freeholders of his neighborhood, with whom he shall inspect and carefully examine the certificate presented, the state and condition of the person so applying, and the same certificate being found genuine and made out in the order as by the said resolves it is directed to be made, the said justice and freeholders shall adjust and settle the monthly pay which the bearer of such certificate shall receive agreeable to the resolves, not exceeding the half pay and rations that such officer or private was entitled to at the time he received the wound, to commence from the time that his pay or subsistence in the army or navy ceased. And the said justice of the peace and freeholders shall indorse or affix to the said certificate an order under their hands and seals directed to the treasurer of the state tax in the county in which the said justice resides, requiring him to pay to the person so disabled as afore-

said the monthly pension allowed on his said certificate, and shall transmit the said original certificate and order to the recorder of the county to be registered in a book. And the said recorder shall make out a copy of the said certificate and order under the seal of his office and shall deliver the said copy to the person in the said certificate and order named.

Provided always, That upon the application of any officer or private of the marines and seamen the said justice and freeholders shall make inquiry whether at the time of the said officer or private's receiving his wound any prize was taken and what dividend the disabled person shall have received or is to receive, and shall administer to him an oath respecting such prize, so that a deduction of the amount thereof may be made out of his monthly pension, agreeable to the said resolves of Congress.

[Section II.] And be it further enacted by the authority aforesaid, That the treasurer of the state tax to whom such certificate under the seal aforesaid shall be produced and shown shall pay the bearer thereof such monthly pension as shall be allowed to him by the said justice and freeholders from the time that shall be fixed in the said order, and so from month to month during his disability and residence in the county, or until other order shall be made by the assembly with respect to such pensioner or pensioners. And the recorder shall at every quarter sessions of the respective counties have in court all the original certificates and orders by him filed and deliver the same to the treasurer who shall keep them as vouchers to his account with the committee of assembly, and shall within sixty days after the court transmit a fair and regular report to the secretary of Congress or board of war.

Provided, That all such pensioned officers, soldiers, marines and seamen that shall be found capable of doing duty in any department of the land or sea service shall be liable to be employed therein, and upon refusal thereof shall forfeit and lose the pension allowed to him or them.

[Section III.] Provided also, and it is hereby further enacted by the authority aforesaid, That no officer, soldier, marine or seaman who receives his pension in this state shall sell or assign or otherwise dispose of his certificate and order of monthly pay



or any part or number of monthly payments thereon to become due to him to any person or persons whatsoever for any consideration or price whatsoever, except it be for the maintaining such pensioner during life or as long as he shall receive that pension. And all contracts for maintaining during life or during the time the pension lasts shall be made in the presence of one justice of peace and of the overseers of the poor of the city, township or district respectively, and security given to their satisfaction. And that the person or persons who shall presume to make such purchase or take such assignment as aforesaid from any pensioner, except as in the case before excepted, being legally convicted thereof in any court of general quarter sessions of the peace of this state or in the supreme court of the same, shall forfeit and pay a sum equal to the sum which he has paid or contracted to be paid for such assignment of such pension to any person who will sue or prosecute for the same, and the pensioner who has contracted for the sale or assignment of his pension shall be admitted as an evidence to the indictment even in case he should become the prosecutor.

[Section IV.] And be it further enacted by the authority aforesaid, That the justice of the peace and the freeholders that shall examine the certificates and make the orders for the payment of the pensions shall receive the sum of seven shillings and six pence for every order, and the recorder for recording the same and making out a copy thereof under seal the sum of two shillings and six pence for each copy, which shall be settled and allowed at every court of quarter sessions and paid by the said treasurer at the charge of the United States.

Passed September 18, 1777. See the Act of Assembly passed January 31, 1783, Chapter 1002. The act in the text was repealed by the Act of Assembly passed September 22, 1785, Chapter 1194.

See also original  
p. 160

## CHAPTER DCCLXX.

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AN ACT TO EMPOWER CERTAIN COMMISSIONERS APPOINTED BY CONGRESS TO TAKE VIGOROUS MEASURES FOR THE DEFENSE OF THE WESTERN FRONTIERS OF THIS STATE AND FOR OTHER PURPOSES THEREIN MENTIONED.

(Section I, P. L.) Whereas inroads have been made on the western frontiers of this state and of the state of Virginia by some savage tribes of Indians, instigated thereto by the commandant of the British garrison of Fort Detroit and other British agents and emissaries and aided by many evil-disposed and disaffected persons on the said frontiers, wherein a number of helpless people have been cruelly massacred and the peaceable inhabitants driven from their homes and reduced to great distress:

And whereas the honorable the continental Congress have appointed commissioners to repair without delay to Fort Pitt to investigate the rise, progress and extent of the disaffection in the quarter aforesaid and take measures for suppressing the same and bringing the deluded people to a sense of their duty and for carrying the war into the country and against the towns of the enemies, both British and Indian, whereby the further progress of the invaders may be prevented and the frontier inhabitants may be secured from further ravages and depredations:

And [whereas] the said Congress have earnestly recommended to the legislatures of the states aforesaid to invest the commissioners with every necessary authority over their respective militias, with powers also to arrest and commit for trial such of their respective inhabitants as shall appear to have been concerned in any conspiracy or plot against the United States, and otherwise afford the said commissioners or other commissioners whom Congress may find it necessary hereafter to appoint for the salutary purposes aforesaid, in case of the death or refusal of the commissioners already appointed, such assistance

as shall be necessary to prosecute with vigor the measures that they may adopt in consequence of the resolves of Congress:

(Section II, P. L.) For furthering the important and necessary designs aforesaid:

[Section I] Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the (same, That the lieutenants and sub-lieutenants, or a majority of them, of the counties of Bedford and Westmoreland in this state shall and they are hereby authorized, empowered and enjoined, upon application to them made by the commissioners appointed or to be appointed by Congress (provided always [that] the said commissioners who may hereafter be appointed by Congress be approved of by the general assembly of this state, or by the president and council thereof in the recess of assembly), to take the most speedy and effectual measures for raising and embodying, whether by classes or otherwise, such parts of the militia of their countries respectively as shall from time to time be deemed necessary and be required by the said commissioners either for the protection of their respective frontiers or for the reduction of any British or Indian town or post, which corps shall be paid, subsisted and provided as continental troops and be detained in service no longer than two months at any one time, unless their service for a further space of time be judged necessary for carrying on an expedition against such town or post, in which case such additional time of service shall be settled and agreed upon with the troops when they are engaged for such expedition.

(Section III, P. L.) Provided always, That those of the militia engaged for two months shall not be again called into service before the remaining militia of their respective counties shall have performed service for an equal space of time and those who shall have been employed for a longer term on any expedition into the Indian country or against any British post shall be exempted from the service for two succeeding tours of duty in the militia, or for a space of time equal to the time in which they shall be employed in such expedition.

[Section II] (Section IV, P. L.) And be it further enacted by



the authority aforesaid, That the commissioners aforesaid be empowered and they are hereby empowered to call on the lieutenants of the counties of Bedford and Westmoreland respectively for such quotas of their respective militias as they the said commissioners shall deem necessary for the defense and protection of their respective frontiers; and the said lieutenants respectively are hereby required and enjoined to furnish with all possible dispatch the militia that may from time to time be required by the said commissioners for the purposes aforesaid.

[Section III.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the commissioners aforesaid are hereby authorized and empowered to arrest the persons and seize the papers, letters and other writings belonging to or found in the possession of any of the inhabitants of the counties aforesaid within this state who have been or shall be in any wise concerned in any plot, conspiracy or combination against the United States, and if after examination they shall see cause to commit such persons to any gaol or place of safe custody within this state or elsewhere in order to their trial for the offenses wherewith they shall be charged.

[Section IV.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That this act shall be and continue in force until the end of the first session of the next general assembly unless sooner repealed and no longer.

Passed December 20, 1777. See the Acts of Assembly passed December 22, 1781, Chapter 956; August 11, 1784, Chapter 1104; September 6, 1785, Chapter 1171; November 10, 1787, Chapter 1326; March 17, 1791, Chapter 1535; January 20, 1792, Chapter 1602; April 3, 1793; Chapter 1668; February 28, 1794, Chapter 1715; September 3, 1794, Chapter 1787; April 1, 1795, Chapter 1821.

SECT. 8. *And be it further enacted by the authority aforesaid,* That before the said Waggon, Horses, Harnels, Gears, and other furniture be sent out of the District, the same shall be duly appraised by two reputable Freeholders of the neighbourhood; one of them to be chosen by the said Waggon-Master; the other by the owner of the Waggon; and if the said owner shall neglect or refuse to choose one of the said Freeholders, then the other Freeholder is to choose two others, and these three are duly and conscionably to appraise and value the said Waggon and Horses, Harnels and other furniture: one copy whereof, signed by them, shall be given to the said owner, and another copy to the said Waggon-Master, who shall enter the same in a book to be kept for that purpose.

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Waggons, &c.  
to be appraised.

SECT. 9. *And be it further enacted by the authority aforesaid,* That the several Waggon-Masters who shall be appointed in pursuance of this Act, and also the drivers of the said Waggon, shall, and they are hereby exempted from all Militia duties, during the time and as long as they shall be in actual service.

SECT. 10. *And be it further enacted by the authority aforesaid,* That this Act shall continue and be in force until the end of the first sitting of the next General Assembly, and no longer.

JAMES M'LENE, SPEAKER.

*Enacted into a Law at Lancaster, the Second  
day of January, A. D. One Thousand,  
Seven Hundred and Seventy-eight.*

JOHN MORRIS, Junior, Clerk of the General Assembly.

## CHAPTER XLVI.

*A further SUPPLEMENT to the Act, intituled,  
“An Act to regulate the Militia of the Common-Wealth  
of Pennsylvania.”*

SECTION 1. **W**HEREAS by an Act of General Assembly of this Common-Wealth, the powers given to the Supreme Executive Council for calling out the Militia into actual service, are not so clearly and distinctly expressed, but that some misconstructions may arise thereon. And the mode therein prescribed for the Lieutenant and Sub Lieutenants to notify the different Classes of the Militia is found tedious and difficult.

Preamble.

SECT. 2. *Be it enacted, and it is hereby enacted by the Representatives of the Free-men of the Common-Wealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That whenever it may be necessary to call into actual service any part of the Militia, in case of rebellion or invasion of this or any of the adjoining States, then it shall and may be lawful for the President or Vice-President and Council, to order into actual service such part of the Militia by Classes, of any County or Counties, as the exigency may require. Provided, that the part so called, doth not exceed Four Classes of the Militia of the County or Counties so called out; and provided also, that such Counties shall not be again called upon to furnish any more Militia, until an equal number of Classes of the Militia of the other Counties respectively be first called: Unless the danger of an invasion from Indians or others should make it necessary to keep in reserve the Militia of such County or Counties for their own immediate defence.

President and  
Council may  
order out the  
Militia.

Not exceeding  
four classes at  
one time.

SECT.

132. Pa.—General Assembly, Philadelphia; Acts, Jan. 1778, J. Dunlap; Act, Dec. 30, 1777, pp. 91–93, Ch. XLVI.

1778.

Officers to give notice.

Their wages.

SECT. 3. *And be it further enabled by the authority aforesaid,* That the Commanding Officer of each Battalion is hereby required immediately to forward the orders of the Lieutenant or Sub-Lieutenant, to the Commanding Officer of each Company respectively, requiring him to notify the Class or Classes of his Company then ordered to march, by written notices left at their usual places of abode, specifying the time and place of rendezvous, and that the Lieutenant or Sub-Lieutenants will hold an appeal, as hereafter directed, at the time and place therein appointed. And that the several Militia Officers respectively, who shall be employed in notifying the Militia in manner aforesaid, shall receive the sum of Ten Shillings *per diem*, for their trouble, to be paid to them by the Lieutenant or Sub-Lieutenants, out of the fines recovered from delinquents.

SECT. 4. AND WHEREAS the hiring of Substitutes by the Lieutenants and others, is by experience found to have obstructed the completion of the quota of this rate to the Continental Army, to the great damage of the common cause: Therefore,

Penalty on delinquents.

proviso.

SECT. 5. *Be it further enabled by the authority aforesaid,* That if any Militia-Man shall neglect or refuse to march in person, on the day appointed as aforesaid, such delinquent shall forfeit and pay within five days, the sum of Forty Pounds, to the Lieutenant or nearest Sub-Lieutenant, unless he produce a sufficient Substitute, of, or belonging, to his own family. *Provided nevertheless,* That every person serving by Substitute as aforesaid, if said Substitute shall be called in his own turn into actual service before the term expires which he was to serve for his employer, that then the person procuring such Substitute shall either march in his the said Substitute's turn, or be liable to pay his fine for neglect; which fine is to be recovered as other fines for neglect of serving, are by this Act directed to be recovered. *Provided also,* That sons, apprentices, or servants, who are not subject to the Militia Laws, may be admitted as Substitutes for their fathers or masters, if of sufficient ability of body, of which the Commanding Officer of the marching class, together with the Lieutenant or nearest Sub-Lieutenant, shall be judge.

SECT. 6. AND WHEREAS the mode of appeal as directed in said Act is founded tedious, and by the length of time allowed for holding of the same, delinquents may remove, and defeat the intent and meaning of the said Act by not paying their fines, to the great injury of this Common-Wealth, and to the dissatisfaction of those of the good people who personally step forth in defence of their country. Therefore,

Appeal.

SECT. 7. *Be it further enabled by the authority aforesaid,* That the Lieutenant or one of the Sub-Lieutenants shall attend at the place appointed for the different classes to rendezvous, and call to his assistance two Freeholders, one of whom shall be a Justice of the Peace, to hear and determine all appeals that may be laid before them, by the persons thinking themselves aggrieved by any thing done in pursuance of this Act, or the Act to which this is a Supplement; and they are hereby authorised and required to grant such relief to such appellants, as to them shall appear just and reasonable, in consideration of inability of body and estate only.

Mode of recovering of the fines.

SECT. 8. *And be it further enabled by the authority aforesaid,* That if any delinquent shall neglect or refuse to pay the fine aforesaid, within five days after the appeal aforesaid, it shall and may be lawful for the Lieutenant or any one Sub-Lieutenant, to issue his warrant to the Sheriff, Constable, or other fit person, to levy the aforesaid fine, by distress and sale of the offenders goods and chattels, lands and tenements, together with five per cent. in full for his trouble, for levying, selling and collecting. But if no such goods and chattels, lands and tenements, can be found, then to seize and take the body of such offender



fender, and commit him to the common goal, or some other place of close confinement for the space of four months, unless he sooner pays the said fine : and no process shall issue to stay the execution of such warrant unless in the case of the seizure of real estates.

1778.

SECT. 9. *And be it further enacted by the authority aforesaid,* That before the Lieutenant or Sub-Lieutenant and Justice of the Peace sit to hear and determine upon any appeal of which they are hereby directed to judge, shall have taken the respective oaths or affirmation of office prescribed by the Constitution ; and the said Freeholder, before he shall sit on the said appeal, shall take the following oath or affirmation, viz. That he will hear and impartially determine on the cases of appeal that may be laid before him, agreeable to law, and according to the best of his knowledge : which oath or affirmation the said Justice, Lieutenant or Sub-Lieutenant, is hereby empowered and required to administer. And the said Justice and Freeholder shall have and receive from the said Lieutenant or Sub-Lieutenant, the sum of Twenty Shillings each for each day they shall sit on the said appeals.

The Lieutenant, Justice, &c. shall first take the oath, &c.

SECT. 10. AND WHEREAS many Militia-Men, by removing from one Battalion or Company to another, find means to escape their tour of duty, and thereby defeat the good intention of the Militia Law. Therefore,

SECT. 11. *Be it enacted by the authority aforesaid,* That no Militia-Man shall withdraw himself from the Company to which he belongs, under the penalty of Five Pounds, to be sued for and recovered, for the use of this State, by the Commanding Officer of the Company from which he shall so withdraw himself, before any Justice of the Peace, by action of debt. *Provided nevertheless,* That persons removing out of the bounds of one battalion or company to another, shall apply to the Commanding Officer of the company to which he did belong, who shall give him a discharge, certifying the class to which he belongs, and whether he hath served his tour of duty or not ; which certificate the said Militia Man shall produce to the Captain or Commanding Officer of the Company in whose bounds he next settles, within ten days after his settlement under penalty of Five Pounds, to be recovered and applied as the aforesaid fine is directed to be recovered and applied. And the Captain or Commanding Officer is hereby required to enroll him in the class specified in said certificate.

Penalty on militia men removing.

SECT. 12. AND WHEREAS it is found upon experience, that subjecting Members of the General Assembly to Militia duties, has a tendency to retard the public business, many of them having been called to serve their tour in the Militia, when their attendance at the same time was absolutely necessary on their duty in the House of Assembly. Therefore,

Exemption of Assemblymen.

SECT. 13. *Be it enacted by the authority aforesaid,* That Members of the General Assembly for the time being, shall be, and they are hereby exempted from performing Militia duties, and from all fines for any neglect thereof during the time they continue Members.

SECT. 14. *And be it further enacted by the authority aforesaid,* That so much of the Act to which this is a farther Supplement, as also so much of the said Supplement to the said Militia Act, as is herein or hereby amended or altered, are hereby declared to be repealed.

Repeal.

JAMES M'LENE, SPEAKER,

*Enacted into a Lancaster, on Tuesday, the Thirtieth day of December, A. D. One Thousand Seven Hundred and Seventy-seven.*

JOHN MORRIS, Junior, Clerk of the General Assembly.  
A a CHAPTER

1779.

Commissions  
of the State &  
County Treasurers.

SECT. 28. *And be it further enacted by the authority aforesaid, That the County Treasurers respectively, shall be allowed for their trouble in receiving and paying all such monies as shall come into their hands respectively, by virtue of this act, the sum of Seven Shillings and Six Pence for every Hundred Pounds; and the Treasurer of the State shall be allowed for his trouble in receiving and paying all such monies as shall come into his hands by virtue of this act, the sum of Two Shillings and Six Pence for every Hundred Pounds, and no more.*

County Treasurers shall  
pay to the  
State Treasurer.

SECT. 29. *And be it further enacted by the authority aforesaid, That the Treasurer of the city and county of Philadelphia, and of each of the other counties, shall pay over all the monies by them severally received, deducting their own commissions or allowance, to the Treasurer of the State.*

Returns of  
property to  
be laid before  
the Assembly.

SECT. 30. *And be it further enacted by the authority aforesaid, That the Commissioners of each respective county shall at the next meeting of Assembly, after the said taxes are settled and adjusted, cause to be laid before this House true and fair duplicates of all the returns of property and rates laid in each respective county, ward or district, under the penalty of Five Hundred Pounds.*

Wages of the  
Commissioners,  
Assessors  
and Collectors.

SECT. 31. *And be it further enacted by the authority aforesaid, That the County Commissioners and Assessors, and each of the Township, Ward, District and Assistant Assessors, shall each of them have and receive Forty Five Shillings per day, for each day that they shall bona fide be employed in the several duties required of them by this act; and that the several Collectors employed for the due execution of this act, shall be allowed Six Pence in the Pound for every Pound by him so collected.*

Commissioners  
may employ a Clerk.

SECT. 32. *And that the said Commissioners be, and they hereby are empowered to employ a suitable Clerk for transacting the business required of such Clerk by this act, who is to be paid for his services out of the taxes to be raised by virtue of this act.*

JOHN BAYARD, Speaker.

*Enacted into a law at Philadelphia, on Saturday the third day of April, in the year One thousand seven hundred and seventy nine.*

JOHN MORRIS, Junior, Clerk of the General Assembly.

## CHAPTER CVI.

See in general

*An ACT for supplying the Army of the United States, and for other purposes therein mentioned.*

Preamble.

SECTION 1. **W**HEREAS many of the good citizens of this commonwealth, by being often of late called out as militia for the defence of their rights and liberties, or having been obliged by the enemy to abandon their habitations, have thereby been deprived of the opportunity of putting in their crops, and taking due care of their harvest, and if some remedy be not applied, many of these brave men and their families must, before harvest,

vest, suffer through want of bread, not by reason of any real scarcity of that article, but chiefly because many of those persons who remained at home, and minded their farms, refusing to turn out in defence of their country, have by that means raised large quantities of grain, and being prompted by avarice, minding only their own private gain, and regardless of the public weal, or the sufferings of their fellow citizens, have hoarded up or monopolized the same, and refuse to sell any part thereof, either for the relief of private individuals in want, or for the use of the United States:

SECT. 2. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania in General Assembly met, and by the authority of the same,* That when, and as often as sufficient information shall be given to any Justice of the Peace within this commonwealth, either by any private person, or by any Quarter-Master-General, Commissary-General, his or their Deputy or Assistant, that any person or persons residing within twenty miles of such Justice, or within the township, ward or district wherein such Justice dwells, is or are possessed of any larger quantity of wheat, rye, barley, Indian corn, oats, spelts or buckwheat, of the crop or crops now in hand, or any other sort of grain, or any flour, than is sufficient for the support of the family, and necessary for the seed and stock of such person or persons until the first day of August next, it shall and may be lawful for such Justice, and he is hereby required and enjoined immediately by his warrant under his hand, to appoint at least three discreet and prudent inhabitants of the township, ward or district, where information shall be given as aforesaid, that such grain or flour is contained, and thereby authorize and direct them to go to the place where the said wheat, rye, barley, oats, Indian corn, spelts, buckwheat or flour is suggested to be kept, and if the same is supposed to be contained in any house, barn, out-house, mill, ware-house or store, and the owner or possessor thereof shall neglect or refuse, on demand, to open the said house, barn, out-house, mill, ware-house or store, it shall and may be lawful to and for the said inhabitants so appointed, and they are hereby empowered and required in the day time to break open and enter the same by force, if necessary; and the said inhabitants so appointed, shall carefully examine what quantity of the said grain or flour such person or persons is, or are possessed of, and how much thereof can be spared over and above what may be necessary for the support of the owner or possessor, his or their families: and the stock, *bona fide*, kept by him or them, which overplus they shall appraise at the current price for which the like respective articles shall, at the time of such appraisement, sell in the neighbourhood; and shall make a return to the Justice, who appointed them, of the quantity which each person can spare as aforesaid, and the price at which they shall appraise the same; after which return and appraisement, if the owner or possessor of such grain shall refuse to sell the same at the appraised price, it shall and may be lawful for the said Justice, and he is hereby required and enjoined, on the application of any of the citizens of this commonwealth, and satisfactory proof given that the person or persons applying is, or are in want of such grain or flour for the use of his, her, or their families or stock, and is or are ready to pay the appraised value thereof, to issue his warrant under his hand and seal directed to, and empowering the Constable of the township, ward or district, wherein such grain or flour shall be appraised, to take such and so many persons as he may think necessary, and to seize all, or so much of the said grain or flour as the said Justice shall think absolutely necessary for the support of the family and stock of such person or persons

Justice shall have power to issue his warrant to take from any persons any grain &c. which they have more than necessary for Family use, seed, &c.



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fons until the first day of August next, which quantity and the appraised value thereof, shall be inserted in the said warrant, and shall deliver the said grain or flour to the person or persons obtaining such warrant, on his, her or their paying the money at which the same shall be appraised, or tendering the same to the owner or possessor of such grain or flour.

If no application be made by a citizen, warrant may be issued on the application of a Quarter-Master.

SECT. 3. *And be it further enacted by the authority aforesaid,* That if no application shall be made by any citizen of this commonwealth for the said grain or flour as aforesaid, for the use of his, her or their families, within forty days after the same shall be appraised as aforesaid, that then and in such case, after the expiration of the said forty days and not before, the said Justice shall and he is hereby empowered and required to issue a like warrant on the application of any Quarter-Master or Commissary General, his or their Deputies or Assistant Deputies, and payment or tender of the value of the grain or flour mentioned in such warrant; and the same proceedings shall be had therein as are herein directed to be had on application of private citizens.

Proviso.

SECT. 4. *Provided always nevertheless,* That no Justice shall issue his warrant to seize such grain or flour so appraised, on the application of any Quarter-Master or Commissary General, his or their Deputies or Assistants, unless the said appraisers shall certify that there is a sufficient quantity of such grain or flour over and above the quantity applied for by such Commissary or Quarter-Master, to support the inhabitants within the township, ward or district, where such grain or flour shall be appraised as aforesaid, until the first day of August next.

Disposal of the money paid or tendered to, and refused by the owners.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if the owner or possessor of such grain or flour, which shall be appraised, seized and delivered as aforesaid, shall refuse to receive the money at which the same shall be appraised as aforesaid, then the person or persons shall, before he shall take away the said grain or flour, deposit the said money in the hands of the said Justice, for the use of the owner, taking the receipt of the said Justice for the same, which shall be a sufficient discharge to the person depositing the same, and shall exonerate him from any future demands of the owner of the said grain or flour; which said money the said Justice is required to pay to the person or persons entitled to receive the same, if he or they shall apply for the same within two days after the said grain or flour shall be seized as aforesaid, or if no such application shall be made within the time aforesaid, that then and in such case the said Justice shall, and he is hereby enjoined within two months after the expiration of the said two days to pay the said money to the Treasurer of the city or county in which the said Justice resides, to be paid by the said Treasurer into the Treasury of this state for the use of the same.

Penalty on removing the grain &c. after appraisalment.

SECT. 6. *And be it further enacted by the authority aforesaid,* That if the owner of such grain and flour, which shall be so appraised, or any person or persons, for or on his, her, or their behalf, shall, before the expiration of sixty days after such appraisalment shall be made, take away or conceal the same, or any part thereof, or shall refuse to deliver the same to such person or persons as shall obtain such warrant from the said Justice, on being paid for or tendered payment for the same as aforesaid, unless the said owner shall have *bona fide* sold the same according to the true intent and meaning of this act, and the proof that such sale was so made, shall lie on the said owner, then and in such case, the said owner of the said grain or flour, or the person in whose custody the same shall be appraised,

praised: and he forfeit and pay a sum equal to double the appraised value of the grain or flour which shall be removed or concealed as aforesaid, one moiety of which fine and forfeiture shall be paid to the County Treasurer for the use of the state, and the other moiety thereof to the person or persons to whom the said grain or flour ought to have been delivered by virtue of the warrant aforesaid.

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SECT. 7. *And be it further enacted by the authority aforesaid,* That if any of the said grain, which shall be appraised as aforesaid, shall, at the time of such appraisement, be unthreshed, and if the owner thereof shall refuse to thresh the same within ten days after the said appraisement, it shall and may be lawful for the person or persons obtaining such warrant as before last mentioned, to thresh the same in the barn of the said owner, without the least molestation or hindrance of the said owner; and if the said owner of the said grain, or any other person or persons on his, her, or their behalf, shall refuse to permit the said grain to be threshed as aforesaid, every such person or persons so refusing, shall forfeit and pay double the appraised value of the said grain, to be paid and applied in the same manner as the fine and forfeiture last mentioned; which said fines and forfeitures may be sued for and recovered by bill, plaint, or information.

Persons obtaining the warrant may thresh the grain in the owners Barns

SECT. 8. *And be it further enacted by the authority aforesaid,* That each of the said Appraisers and the Constable respectively, shall have and receive Thirty Shillings per diem for each and every day which he or they shall be *bona fide*, employed on the duties required to be performed by them by this act, to be ascertained by the Justice who granted the warrant for the seizure of the same: And as it is but just and reasonable that the person who may hoard up or engross any grain or flour, and shall refuse to sell it at the current price, should pay all the charges attending the seizure of the same;

Fees of the Appraisers & Constable,

SECT. 9. *Be it therefore enacted,* That in such case, as well the wages of the said Appraisers and Constable, as the charges of the said warrant, shall be deducted and paid out of the appraised price of the same.

shall be paid by the owners.

SECT. 10. *Provided always,* That if the price tendered and refused as aforesaid, do not amount to so much as the said grain or flour shall be appraised, or if the party against whom the said first mentioned warrant shall be granted, shall not be adjudged to have more grain or flour than is necessary for his, her, or their own use as aforesaid, in such case all the said charges shall be paid by the person applying for such warrant.

Proviso

SECT. 11. *Be it further enacted by the authority aforesaid,* That the President and Supreme Executive Council of this state, be, and they are hereby empowered to permit the exportation of any quantity of wheat, barley, flour, rye, Indian corn, or any other sort of grain, to any one of the United States applying for the same, under such regulations and restrictions as they, in their discretion, may judge most expedient.

The President and Council may permit exportation.

SECT. 12. *Provided,* That it shall appear to them, the said Council, that such quantity so to be exported can be spared after reserving a sufficient quantity for the necessary consumption of the army and the inhabitants of this state.

Proviso

SECT. 13. *And provided also,* That it shall appear, *bona fide*, that the said wheat, barley, flour, Indian corn, rye, or any other sort of grain, is absolutely necessary

Proviso

1779.

necessary for the home consumption of the state applying for the same; any thing in an act, intituled, "An act to prohibit the exportation of provisions from the state of Pennsylvania for a limited time," to the contrary notwithstanding.

JOHN BAYARD, Speaker.

*Enacted into a law at Philadelphia, on Saturday the third day of April, in the year One thousand seven hundred and seventy-nine.*

JOHN MORRIS, Junior, Clerk of the General Assembly.

## CHAPTER CVII.

*An ACT to prevent the trespassing upon the uninclosed grounds lying in the townships of Passyunk, Moyamensing, Northern Liberties and Germantown, in the county of Philadelphia.*

Preamble.

SECTION. 1. **W**HEREAS the freeholders and inhabitants of the townships of Passyunk, Moyamensing, Northern Liberties, and Germantown, have suffered considerable damage by the enemy, during the time of their being in possession of the city of Philadelphia, and parts adjacent, particularly by the loss of their fences and other inclosures.

SECT. 2. **A**ND WHEREAS it is difficult, if not impossible at this time to repair the said damage, and without the aid of the Legislature they would be disabled from cultivating their lands and supplying the said city with hay, and vegetables as usual.

SECT. 3. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That from and after the publication of this act, no horse, mare, gelding, cow, ox, bull, sheep, or other cattle, shall be suffered between sun-set and sun-rise to run or go at large within the said townships of Passyunk, Moyamensing, the Northern Liberties and Germantown (except the lands lying between Keeler's Lane to the southward, and the military works erected by the British army in the Northern Liberties to the northward, and extending from the river Delaware to Schuylkill.) And in case any such creature shall be found loose and at large within either of the said townships, except as above excepted, it shall and may be lawful for any freeholder or inhabitant within the same, and for any other person acting by the authority or command of any such freeholder or inhabitant, to take up such creature going at large, whether the same is trespassing or not, and to impound or confine the same in the common and open pound of the township erected or to be erected for that purpose, and there to detain the same until the owner or owners thereof shall pay to the Overseers of the Poor of such township the sum of Twenty Shillings fine, for every creature so suffered to run or go at large and taken up as afore-said, and reasonable cost and charges for keeping the same, and pay for any damage which such creature shall have done on the meadows, gardens or fields of any of the inhabitants of the said townships in such manner as is herein after directed.

No cattle to run at large.

Penalty on those who suffer them to go at large.

SECT. 4.



ed and recovered in the same manner, and the persons breaking such pounds or rescuing cattle lawfully impounded therein, punished as in the aforesaid act for erecting of pounds, and in the act entitled "An act concerning cattle, horses and sheep trespassing within this province,"<sup>1</sup> is directed and provided.

[Section V.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That this act shall be and continue in force from the publication thereof, until the first day of December next, and no longer.

Passed April 5, 1779. See the note to the Acts of Assembly passed January 12, 1705-6, Chapter 158; May 10, 1729, Chapter 301; March 4, 1763, Chapter 490; and the Acts of Assembly passed March 13, 1780, Chapter 892; April 2, 1781, Chapter 934.

See also original  
pp. 382, 383

## CHAPTER DCCCXLIII.

A FURTHER SUPPLEMENT TO THE ACT, ENTITLED "AN ACT TO REGULATE THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA."<sup>2</sup>

(Section I, P. L.) Whereas it has been found by experience, that the fines and penalties laid on persons neglecting to perform the military duties required by the act to which this is a supplement are insufficient for the good purposes intended:

For remedy whereof:

[Section I.] (Section II, P. L.) Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That from and after the publication of this act, each and every person or persons within this state, who shall not do and perform his or their tour of militia duty as directed by law, shall forfeit and pay the sum of one hundred pounds, instead of forty pounds heretofore imposed by the former law, to be recovered in the same manner as fines for such neglects are directed to be recovered; and for all neglects in

<sup>1</sup> Passed March 4, 1763, Chapter 490.

<sup>2</sup> Passed March 17, 1777, Chapter 750.

performing the other military services required by the law to which this is a supplement, or any supplement to the same, shall pay six times what they were by law obliged to pay, except the inhabitants of the city of Philadelphia and the liberties thereof, who shall pay eight times the sum payable by the former laws for all neglects aforesaid. And the captain or commanding officer of each company within this state shall in one hour after the time appointed for meeting, order the roll or list of names to be called, and the next field day make a just return of each and every person absent at roll call on any of the muster days, to the commanding officer of the battalion to which he shall belong, so that the fines may be levied for his neglect, and if any captain or commanding officer shall refuse or neglect to make such return, he shall forfeit and pay for each neglect or refusal fifty pounds, which, with all other fines under this law shall be recovered in the same manner as fines for not performing their tour of militia duty. And the commanding officer shall as soon after such return as conveniently may be, make return to the lieutenant, or sub-lieutenant of the city or counties, so that the same may be recovered, and for such neglect or refusal he shall forfeit and pay the sum of one hundred pounds.

(Section III, P. L.) And whereas sufficient time, has not in some instances been allowed for appeals:

For remedy whereof:

[Section II.] (Section IV, P. L.) Be it enacted by the authority aforesaid, That from and after the publication hereof, it shall and may be lawful for the lieutenant or sub-lieutenants of the city of Philadelphia, or any of the counties of this state, to appoint any other day or days of appeal that he or they shall judge necessary for the doing of complete justice to the good people of this state.

(Section V, P. L.) And whereas by the laws heretofore in force, it is not in the power of the supreme executive council, even in the time of the greatest danger to draw into service more than a certain number of classes, or the one half of the battalions or companies of militia:

For remedy whereof:

[Section III.] (Section VI, P. L.) Be it enacted by the authority aforesaid, That in case of the actual invasion of this state or any part thereof, the supreme executive council, are hereby authorized and empowered to call into service any company or companies, battalion or battalions of militia as may be most convenient, or as the case may require, anything in the act for regulating the militia of this commonwealth or the several supplements thereunto, contained to the contrary in any wise notwithstanding.

(Section VII, P. L.) And for the encouragement of those brave men who shall turn out in defense of their country:

[Section IV.] (Section VIII, P. L.) Be it further enacted by the authority aforesaid, That every militia-man of this state, who shall turn out in his class or other ways according to law, and shall serve his full tour of two months, shall have and receive the sum of twenty pounds over and above the pay which such militia man is entitled to receive by the laws heretofore in force, and in that proportion for any lesser time if lawfully discharged; which said overplus shall be paid by the paymasters of the militia of the city and several counties of this state, out of the fines which shall be lieved and collected from delinquents by this act; which said paymasters respectively on producing an attested certificate from the commanding officer of any such draught of militia, to the supreme executive council, shall receive an order on the state treasurer for such sum or sums, as may appear to council to be due.

[Section V.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That from and after the publication of this act, the lieutenant of the city of Philadelphia, and of each county of this state shall be allowed for each day they are actually employed by virtue of this act, the sum of thirty-seven shillings and six pence, and every sub-lieutenant within this state shall be allowed for each day they are actually employed as aforesaid, the sum of thirty shillings, and no more.

[Section VI.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That so much of the act to regulate the militia of this commonwealth and the several supplements there-



to as is hereby altered or supplied is hereby declared to be repealed and made void.

Passed April 5, 1779. See the note to the Act of Assembly passed March 17, 1777, Chapter 750. The act in the text was repealed by the Act of Assembly passed March 20, 1780, Chapter 902.

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## CHAPTER DCCCXLIV.

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AN ACT TO AMEND AN ACT OF GENERAL ASSEMBLY OF THIS STATE, ENTITLED AN ACT FOR THE REGULATION OF WAGONS, AND THE SUPPLEMENT AND FURTHER SUPPLEMENT TO THE SAID ACT.

(Section I, P. L.) Whereas, in and by the act of general assembly, entitled 'An act for the regulation of wagons, carriages and pack horses, for the public service,'<sup>1</sup> passed at Lancaster, on the second day of January, one thousand seven hundred and seventy-eight, it is enacted that "upon application to the wagon master general of this state by the quarter master general, he shall issue his order to the county wagon master to furnish the number of wagons and teams that may be wanted; taking care, that, as far as circumstances will admit, they perform the said service in rotation, paying due regard to whose wagons have already been in the service."

(Section II, P. L.) And whereas the liberal construction that has been given to the authority vested in the quarter master general of the federal army has been such as to enable his deputies to call forth the wagons of this state in such numbers and for such lengthy and distant services, as to greatly overburden and oppress the husbandmen thereof, and to hinder the tillage of the country, and the supply of bread, as well for the use of the federal army as the sustentation of the inhabitants:

For remedy whereof:

[Section I.] (Section III, P. L.) Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the

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<sup>1</sup> Passed January 2, 1778, Chapter 780.

by the authority aforesaid, That the supreme executive council shall and is hereby authorized and empowered to draw orders on the state treasurer in favor of the commissioners for such sums and in such times as they shall think proper for the purpose of carrying this act into execution.

[Section VII.] (Section IX, P. L.) [And be it further enacted by the authority aforesaid, That the following persons shall be and they are hereby appointed commissioners in and for the several counties hereinafter mentioned; to-wit: for the county of Philadelphia, Jacob Reed, Nathan Levering, Thomas Dungan, Jenkin Evans, Robert McDowell, Andrew Reed and Peter Holston; for the county of Bucks, John Thompson, Joshua Anderson, Andrew Long, Senior, Robert Robinson, Robert Stewart, [and] Nathaniel Vansant; for the county of Chester, Andrew Boyd, Senior, Thomas Cheney, John Beaton, Edward Parker and Thomas Heslip; for the county of Lancaster, Richard Foree, David Wattson, Thomas Edwards, James Anderson, Junior, Hugh Pedon, William Swan, Jacob Fouts, Martin Holman, James Jack, Esquire, and William Clark; for the county of Berks, Joseph Heester, Michael Lindemuth, Jacob Weaver, Henry Spycker, Jacob Boyer, Jacob Bishop and Jacob Morgan, Senior, and for the county of Northampton, Anthony Learch, David Deshler, Thomas Moore and Thomas Wilson.]

Passed October 9, 1779. See the Act of Assembly passed January 2, 1778, Chapter 782.

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## CHAPTER DCCCLXV.

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AN ACT TO EMPOWER THE SUPREME EXECUTIVE COUNCIL AND JUSTICES OF THE SUPREME COURT TO APPREHEND SUSPECTED PERSONS, AND TO INCREASE THE FINES TO WHICH PERSONS ARE LIABLE, FOR NEGLECTING TO PERFORM THEIR TOUR OF MILITIA DUTY.

(Section I, P. L.) Whereas there is reason to suspect that there are sundry persons within this commonwealth, who by their general conduct have manifested an enmity to the liberty and

independence of their county; and it is inconsistent with the public safety that such persons should be at liberty, to spread disaffection, or have it in their power to give intelligence to the enemy, or enjoy the same freedom, which the good citizens of this commonwealth, who have given proofs of their attachment to the common cause enjoy:

(Section II, P. L.) And whereas the legislatures of countries most jealous of their liberties, have, in times of public danger, consented to a temporary suspension of laws, which they have considered as the greatest support of those liberties:

[Section I.] (Section III, P. L.) Be it therefore enacted, and it is hereby enacted, by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That whenever complaint shall be made to the supreme executive council or justices of the supreme court, or to any of them, that the general conduct of any person within this Commonwealth, is such, that there is just reason to suspect he is an enemy to the American cause, or that he hath manifested a general disaffection thereunto, it shall and may be lawful for the said supreme executive council or justices, or either of the said justices, and they are hereby required to issue their warrant and apprehend such person, and bring him before said council or justice and if it shall appear on due examination that such person has in his general conduct manifested an enmity or disaffection to the liberty and independence of the United States of America, the said supreme executive council or justice shall bind such person over, with sufficient security to his good behavior, or for want of such security shall commit him to gaol, there to remain until the end of the first sitting of the next assembly. Or if it shall appear to the said council or justice, that it would be dangerous that such person should be permitted to go at large, then the said council or justice shall commit such person to the gaol aforesaid, there to remain for the time aforesaid without bail or mainprize or shall send such person out of this state.

(Section IV, P. L.) And whereas nothing is more just and equitable than that persons who neglect or refuse to turn out in defence of their liberty and property, should pay an equivalent



in proportion to the property which is protected by those who do turn out at their country's call. In order to enable the legislature to make some recompense to such as perform their tour of duty, greatly to the prejudice of their private affairs, and often to the great distress of their families.

[Section II.] (Section V, P. L.) Be it enacted by the authority aforesaid, That instead of the sum of one hundred pounds, which persons refusing to perform their tour of militia duty are now by law subject to, every person and persons who shall refuse or neglect upon being lawfully warned, to perform their tour of militia duty, according to the true intent and meaning of the militia laws of this commonwealth, it shall and may be lawful for the lieutenant or sub-lieutenant of the city of Philadelphia and the proper county and the judges of the court of appeal to fine each and every person so neglecting or refusing in any sum not exceeding one thousand pounds nor under one hundred pounds, except in cases of inability of body and estate: and in laying and judging of the amount of the said fine the said lieutenant or sub-lieutenant and judges shall have a due regard to the value of such delinquents estate and circumstances, and the said fines hereby imposed shall be assessed, levied and collected in the same manner as the fines which persons are now subject to for refusing to perform the like duties are directed to be assessed, levied and collected.

[Section III.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant of the city and each county in this state from and after the publication of this act shall have and receive sixteen dollars per diem for each day they shall be actually employed and shall be authorized to pay fifteen dollars to each of such persons as shall be summoned to and shall attend and sit in their courts of appeal and the sub-lieutenants shall have and receive fifteen dollars per diem for each day they shall be in actual service as aforesaid.

Passed October 10, 1779. See the Acts of Assembly passed November 27, 1779, Chapter 872; March 20, 1780, Chapter 902; March 24, 1780, Chapter 906.

See also original p. 146

therefrom arising shall be appropriated towards paying for the lands to be purchased and the new court house and prison to be built in the said place so as aforesaid to be provided.

[Section IV.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That for the defraying the remainder of the expenses and charge of purchasing the land, building and erecting the said court house and prison, it shall and may be lawful for the commissioners and assessors of said county, or a majority of them, to assess and levy so much money as the said trustees, or any four of them, shall judge necessary for paying the remainder aforesaid, of purchasing the land and finishing the said court house and prison, and they are hereby required so to do.

Passed March 20, 1780. See the Acts of Assembly passed March 22, 1784, Chapter 1081; March 30, 1785, Chapter 1152; March 18, 1786, Chapter 1215; September 25, 1786, Chapter 1247; September 26, 1789, Chapter 1443; March 12, 1800, Chapter 2125. Recorded L. B. No. 1, p. 373, &c.

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## CHAPTER CMII.

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### AN ACT FOR THE REGULATION OF THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA.

(Section I, P. L.) Whereas a militia law founded upon just and equitable principles hath been ever regarded as the best security of liberty, and the most effectual means of drawing forth and exerting the natural strength of a state:

(Section II, P. L.) And whereas a well regulated militia is the only safe and constitutional method of defending a free state, as the necessity of keeping up a standing army, especially in times of peace, is thereby superceded:

(Section III, P. L.) And whereas the militia law of this commonwealth enacted by the general assembly the seventeenth day of March, one thousand seven hundred and seventy-seven,

142. Pa.—*General Assembly, Philadelphia; Statutes, Mitchell and Flanders, Vol. X, 1904; Act, Mar. 20, 1780, pp. 144-173, Ch. CMII.*

from a change of circumstances and other causes, hath become insufficient to answer the purposes aforesaid, which renders it highly necessary that a new law should be enacted:

Therefore:

[Section I.] (Section IV, P. L.) Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That the president in council or, in his absence, the vice-president in council, of this commonwealth shall appoint and commissionate one reputable freeholder in the city of Philadelphia, and one in each county within this state to serve as lieutenants of the militia for the said city and counties respectively; and, also, any number of persons not exceeding two for the said city, and in the several counties any number not exceeding the number of battalions now or to be hereafter formed, to serve as sub-lieutenants in the said city and counties respectively, who, besides the powers which are given him and them by this act, shall have the title and rank which the president in council or, in his absence, the vice-president in council shall confer, which said lieutenant or, in his absence or incapacity, two or more sub-lieutenants shall have full power and authority to do and perform all and singular the duties required of the said lieutenants by this act.

[Section II.] (Section V, P. L.) And be it enacted by the authority aforesaid, That the lieutenants and sub-lieutenants, before they enter upon the execution of their offices, respectively, shall give bond to the treasurer of the county in which they severally reside, in the name of the president or commander-in-chief of the state, with one sufficient surety in the sum of twenty thousand pounds, conditioned for the faithful accounting for and paying all the moneys which shall come to their hands by virtue of this act when thereunto lawfully required. And that the public bonds given or to be given by the treasurer of the state or county treasurers for the due discharge of their respective offices shall be deemed to extend to the faithful performance of the trust hereby committed to them respectively.

[Section III.] (Section VI, P. L.) And be it further enacted



by the authority aforesaid, That the said lieutenant or sub-lieutenants (once in every year) shall issue his or their warrants to the captain or commanding officer for the time being of each company of the several battalions in the said city and counties respectively, or to some other suitable person, commanding him, in the name of the commonwealth, to deliver to him or them, the said lieutenant or sub-lieutenants, within ten days from and after the date of the said warrants (unless the lieutenant or sub-lieutenants shall judge a longer time to be necessary, which he or they are hereby empowered to grant) on oath or affirmation, which any of them is hereby empowered to administer, a true and exact list of the names and surnames of each and every male white person inhabiting or residing within his township, borough, ward or district, between the ages of eighteen and fifty-three (delegates in Congress, members of the supreme executive council, members of the general assembly, judges of the supreme court, attorney-general for the state, the judges of the admiralty, treasurer of the state, sheriffs, gaolers and keepers of workhouses, ministers of the gospel of every denomination, professors and teachers in the university, postmasters and postriders belonging to the general post-office, menial servants of ambassadors or ministers and consuls from foreign courts and of delegates in Congress from other states registered with the secretary of the supreme executive council of this state and servants purchased bona fide and for a valuable consideration only excepted).

[Section IV.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant and sub-lieutenants aforesaid shall, within five days after they shall receive the lists aforesaid, if they see cause, alter the present divisions of the city and counties respectively and divide them into new districts, each district to contain not less than four hundred and forty nor more than one thousand, officers and privates included, at the discretion of the said lieutenants and sub-lieutenants, and then sub-divide the said districts into eight parts as nearly equal as may be, paying due regard in each division to the convenience of the inhabitants: Provided always, That

two-thirds of the lieutenants met for the above purpose agree to such division, and that each person be annexed to the numerical class to which he formerly belonged.

[Section V.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That the militia of the Northern Liberties of the city of Philadelphia, the district of Southwark and the township of Moyamensing and Passyunk be and they hereby are united to the city of Philadelphia, to act in conjunction with the militia of the said city, and distinct from the rest of the county of Philadelphia, that they draw lots for rank in battalion and be joined in brigade and act in every other matter that respects the militia law as if they were inhabitants of the said city, and to be under the direction of the lieutenant and sub-lieutenants of the city.

[Section VI.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant and sub-lieutenants of the city of Philadelphia and districts annexed, shall, out of the several battalions of the said city and districts annexed, take such a number as will compose eight companies to form one battalion of artillery, to be officered and arrayed as follows, that is to say, one lieutenant-colonel, one major, eight captains, eight captain lieutenants, eight first lieutenants, sixteen second lieutenants, the senior to bear the standard and the junior to do the duty of conductor; paymaster, adjutant and quartermaster to be taken from the line; one surgeon, one sergeant major, five major, drum major, eight clerks, thirty-two sergeants, forty-eight bombadiers, forty-eight gunners, eight drummers, eight fifers and four hundred matrosses, and both the officers and privates of the said battalion shall be subject to the same fines and penalties for any omission of duty as the infantry: Provided, nevertheless, That the persons composing the artillery heretofore formed may be permitted to continue as a part of the said battalion of artillery and the officers shall be elected in the same manner as is directed by this act for the election of officers of the infantry.

[Section VII.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That the several captains of the artillery battalion shall determine their rank by lot, and be

numbered from one to eight in numerical order, and be subject to be drawn forth into actual service in rotation by companies, according to their number in rank, number one in rank with the first class of the militia and so on, until all shall take their tour, or otherwise as the commander-in-chief of the militia shall direct.

(Section XI, P. L.) And whereas it is expedient to embody such a number of light horse as will be useful when the militia is called into actual service:

Therefore:

[Section VIII.] (Section XII, P. L.) Be it further enacted by the authority aforesaid, That each of the lieutenants of the several counties of this state may form a corps of light horse not to exceed six privates for each battalion of infantry in each county, to be taken distributively out of each, in case volunteers offer; otherwise, at large throughout the county. And the light horse shall be officered as light horse usually are, and shall be subject to appear upon muster days, and shall turn out in classes as other militia; and in case any person who shall be admitted into the said light horse shall fail of providing himself with a suitable horse, weapons and furniture, such person shall be liable to be called out and serve in the foot militia.

[Section IX.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That the troop of light horse in the city of Philadelphia shall be limited to the number of fifty, exclusive of officers, the vacancies thereof to be filled in the manner heretofore practiced; and the said troops shall be liable to appear on muster days, and to be called out into service as other militia, and the light horse of this state, when in actual service, shall be subject to the same rules and regulations as the foot militia and to like fines and penalties for neglect of meeting on muster days or turning out on their tour when thereunto called, such fines and penalties to be appropriated as the fines and penalties for like offenses in other cases.

[Section X.] (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That if any light horseman shall be elected or appointed a commissioned officer in any battalion



of infantry of his proper city or county, and on notice given him in writing by the lieutenant shall accept thereof, his place in the said light horse shall be vacated and any light horseman who shall be absent more than four months from his city or county shall vacate his place in the troop to which he belonged.

[Section XI.] (Section XV, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant or sub-lieutenant shall appraise the horse of each person serving as a light horseman, immediately before every time of going into actual service, and enter the same in a book, and in case such horse shall be killed or die in actual service or be taken by the enemy, otherwise than by neglect he shall be paid the value of such appraisement by an order to be drawn by the lieutenant or any two sub-lieutenants on the militia fund in the hands of the treasurer for that purpose.

[Section XII.] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That the said lieutenants shall give public notice by advertisements at ten or more of the most public places in the said districts respectively, of the said divisions being made, and appointing a certain day for each district, not less than [sic] [than] ten days after the said notice, and requiring the male white inhabitants between the ages aforesaid residing in the said divisions respectively to meet at a certain place as near the centre of the said division as may be, and then and there, between the hours of ten in the morning and six in the afternoon of the said day, to elect, by ballot, two field officers, That is to say, one lieutenant, colonel and one major, and the inhabitants of the said subdivisions respectively shall elect by ballot, as aforesaid, on the same or some other day as soon as convenient, one captain, one lieutenant and one ensign, previous to which said election the said inhabitants shall elect two freeholders to preside as judges thereof, and all and each of these officers respectively shall be such persons as have taken the oath of allegiance and abjuration agreeable to the laws of this state; and each captain shall appoint a suitable person for clerk in his company; and the said lieutenant or sub-lieutenant shall attend and superintend each and every of the said battalion elections, and

shall cause the lieutenant-colonels so elected in the city and counties respectively to meet together as soon as may be, and cast lots for rank of the battalions and the rank of the officers in each battalion shall be determined by the lot drawn by their respective lieutenant-colonels, and the captains so elected in the sub-divisions shall meet and cast lots for their rank in the battalion to which they belong, and the rank of the sub-altern officers in each company shall be determined by the lot drawn by their respective captains. And the said lieutenants shall, within ten days, or as soon as may be, having regard to their local situation, transmit proper certificates to the president of the supreme executive council of the names of the persons so as aforesaid elected, and their rank, both of battalion and companies in the several battalions, in order that commissions may be forthwith granted to them agreeable to the said certificates, and elections for officers in the light horse shall be made in like manner as elections for officers in the infantry.

[Section XIII.] (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That if any battalion, troop or company shall neglect or refuse to elect their officers as aforesaid, then, in such case, it shall and may be lawful for the lieutenant, with the advice and consent of two or more of the sub-lieutenants of the city of Philadelphia, and of such county where such neglect or refusal shall be, to nominate one reputable person to the supreme executive council in the room of each officer so neglected to be chosen, and the said council, approving thereof, shall commission the said person, which shall be as effectual to all intents and purposes as if the said officers had been elected as before directed, and the said lieutenant shall, as soon as may be, acquaint the parties so neglecting or refusing with the appointments so as aforesaid made. And the said several and respective officers elected or appointed as aforesaid shall serve respectively as officers of the militia for the space of three years, at the end of which time the lieutenant of the city and counties respectively, in the manner hereinbefore directed, shall cause a new election to be held in

the said city and counties respectively, but nothing herein contained shall be construed to render any of the former officers incapable of being re-elected.

[Section XIV.] (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That the commissioned officers of each company shall appoint three sergeants, three corporals, one drummer and fifer for their respective companies, and all persons who have heretofore been officers in the militia under the late law, if not re-elected, shall deliver up their arms, accoutrements, drums, fifes and colors if paid for by the public, to the lieutenant or sub-lieutenant of the city or county aforesaid; and the lieutenant of the city of Philadelphia and the lieutenant of the counties respectively are hereby authorized to purchase such drums, fifes and colors as may be afterwards wanted to supply the companies in the city and counties respectively.

[Section XV.] (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That the field officers of each battalion in this state shall constitute and appoint, in their respective battalion, one chaplain, one quartermaster, one surgeon, one adjutant, one quartermaster sergeant, one sergeant major, one drum and fife major; and the lieutenants and sub-lieutenants of the city and counties respectively shall, at their discretion, furnish and procure proper carriages for the battalion or drafts of the militia when it shall be necessary.

[Section XVI.] (Section XX, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant or sub-lieutenants of the city and counties respectively shall pay such wages as shall be necessary to one adjutant, one quartermaster sergeant and one drummer and fifer for every day that the service may require them, out of the moneys arising from fires, on the said adjutant, quartermaster sergeant, drummer and fifer producing a certificate of the service so performed from the commanding officer of the said battalion or company.

(Section XXI, P. L.) And whereas the sums allowed by the late militia law for a drummer and fifer have been insufficient and many officers have been obliged to pay considerably more:

[Section XVII.] (Section XXII, P. L.) Be it therefore en-



acted by the authority aforesaid, That the lieutenants shall and hereby are required to pay unto such captains or commanding officers of companies such reasonable sums as they have expended for drummers and fifers on their producing an account of such costs properly certified.

[Section XVIII.] (Section XXIII, P. L.) And be it further enacted by the authority aforesaid, That the commissioned officers of each company of militia shall nominate and appoint one discreet person who shall be called the almoner, residing in the district or sub-division out of which their company is formed, provided such almoner is above the age of fifty-three years, to take proper care of the families of such poor militiamen, within their respective districts, as are in actual service in their own turn and to grant them such support as their necessities may require, provided such support do not exceed half the price of daily labor as the same shall be ascertained as hereinafter is directed, and the said officers of the company, or any two of them, shall make out a certificate of their nomination and appointment, directed to the lieutenant of the city or lieutenant or sub-lieutenants of the county to which the company belongeth; which certificates shall enable the said almoner thereby appointed to draw from time to time on the said lieutenant or sub-lieutenant for such sum or sums of money as shall be necessary for the purpose aforesaid, and he shall render an account of the moneys by him drawn to the said lieutenants.

[Section XIX.] (Section XXIV, P. L.) And be it further enacted by the authority aforesaid, That every sub-lieutenant of the said city and several counties shall, once in every three months, render an account to his proper lieutenant of all moneys received by him and of his expenditures by virtue of this act, and settle and pay to him the balance of the same, and the lieutenant of the said city and each county respectively shall make out complete accounts of all the moneys received by him and of his expenditures and return the same to the supreme executive council once in every six months, and each lieutenant and sub-lieutenant is hereby empowered to employ one clerk the better to complete the same, and on

failure of accounting as aforesaid each lieutenant and sub-lieutenant shall forfeit and pay for every such neglect the sum of ten thousand pounds, to be applied as other fines are directed to be applied by this act.

[Section XX.] (Section XXV, P. L.) And be it further enacted by the authority aforesaid, That the precedence of the officers of the city of Philadelphia and of the several counties in this commonwealth shall be determined as follows, That is to say, when the commissions are of equal rank and date the officers of the city of Philadelphia and districts annexed shall take rank or precedence of all other officers of equal rank in this state and next to them the officers of the county of Philadelphia and so on, according to the seniority of the counties respectively.

[Section XXI.] (Section XXVI, P. L.) And be it further enacted by the authority aforesaid, That the whole of the militia so enrolled as aforesaid shall be subject to be exercised in companies under their respective officers as followeth, That is to say, in the city of Philadelphia and districts annexed in companies on the two last Mondays in the month of April and in battalion on the two first Mondays in the month of May; and the first battalion shall muster in battalion on the third Monday in May, the second battalion on the Tuesday following, the third battalion on the Wednesday, and so on till the whole number of battalions shall have mustered according to their numerical rank on any or every day of the week (Saturday and Sunday excepted) until the whole number of battalions shall have mustered in the aforesaid manner; and on the day following, should it not happen to be Saturday or Sunday, the whole number of battalions belonging to the city of Philadelphia and districts annexed shall meet in brigade and the militia of the city of Philadelphia and districts annexed shall meet to exercise in companies the two last Mondays in the month of August and in battalion on the two first Mondays in the month of September, and the first battalion on the second Monday in the month of October, the second battalion on the Tuesday following, and the third battalion on the Wednesday and so on until the whole number of battalions according to their

rank have mustered, except as before excepted. And then, on the day following (with the foregoing exceptions) the whole battalions shall meet in brigade. And in each and every county in the following manner, That is to say, in companies the two last Mondays in the month of April, and the two first Mondays in the month of May, and shall begin their mustering in battalion in the following manner to wit, the first battalion shall meet in battalion on the third Monday of the said month, the second battalion on the Tuesday following, the third battalion on the Wednesday, and so on according to the rank of battalions in the aforesaid manner mustering each day in the week (Saturday and Sunday excepted) and until the whole number of battalions belonging to each county shall have mustered in this manner; and in companies the two first Mondays in the month of October, and the two first Mondays in the month of November; and the first battalion in battalion on the third Monday in the month of November, the second battalion on the Tuesday following, the third battalion on the Wednesday and in this manner until the whole number of battalions belonging to each county according to their ranks severally shall have mustered on any day it may happen (except on a Saturday or Sunday as before excepted). And on each of the said days every militiaman so enrolled shall duly attend with his arms and accoutrements in good order; and a sergeant, or the clerk of each company, shall, at the end of one hour after the time appointed for the meeting of the company or battalion, call over the muster roll of the company, noting those who are absent and on that day shall make return in writing to the captain or commanding officer then present of such absentees, and all persons so absent at the time of calling over the roll or who shall depart from the parade before duly discharged shall be liable to the fines hereafter mentioned.

[Section XXII.] (Section XXVII, P. L.) And be it further enacted by the authority aforesaid, That if any commissioned officer shall neglect or refuse to attend on any of the days appointed for exercise in companies as aforesaid (unless prevented by sickness or some other unavoidable accident) such commissioned officer shall forfeit and pay the price of three



days' labor; and any non-commissioned officer or private and all enrolled persons so refusing or neglecting (except as before excepted) shall forfeit and pay the price of one and a half days' labor, and on a brigade or battalion day a field officer shall forfeit and pay the price of six days' labor, and a commissioned officer under that rank the price of four days' labor, and a non-commissioned officer or private and all enrolled persons refusing to meet and exercise the price of two days' labor (excepting as before excepted), the said prices to be ascertained as hereafter directed. The names and surnames of all which person so incurring the said fines and penalties (except such as may have paid the same into the hands of the captain or commanding officer of the company) shall be duly returned by the captain or commanding officer of each company under his hand, together with such fines as he has received to the lieutenant-colonels or commanding officers of the battalions respectively on each field day, which said lieutenant-colonel or commanding officer of battalion shall, on receipt of such fines and returns, forthwith transmit the same to the lieutenant or one of the sub-lieutenants of the county; and also a duplicate thereof to the treasurer of the county, and the said lieutenant or sub-lieutenant shall immediately after the said returns are respectively made to him cause the same to be recovered by issuing his warrant to the sheriff, constable or other fit person that he can procure to levy the aforesaid fines by distress and sale of the offender's goods and chattels, together with five per centum for collecting where no distress is necessary to be made, and seven and a half per centum in case of distress and sale, in full for his trouble for levying, selling and collecting (unless the offender show cause of absence by sickness or otherwise, and can produce a certificate from the captain or commanding officer of the company, who may give such certificate if he verily believes the offender ought to be excused from paying the said fines), but if no such goods and chattels can be found, then to seize and take the body of such offender, and commit him to the common gaol or some other place of close confinement for the space of ten days for each fine, unless he sooner pay the same. And the lieutenant shall twice in

each year transmit the said fines, when collected, into the hands of the county treasurer, who shall pay the same into the hands of the state treasurer, to be kept as a fund, subject to such drafts as may be made upon him from time to time by the lieutenant or at least two sub-lieutenants for the use of the militia of that county. But if the funds of any county, by the generality of their turning out, should be insufficient to answer the drafts for the support of persons serving or suffering in the militia, in that case the executive council shall be empowered to draw on the funds of such other counties whose surplus may be most enabled to bear it.

[Section XXIII.] (Section XXVIII, P. L.) And be it further enacted by the authority aforesaid, That the treasurer of each county and the state treasurer shall keep all the moneys arising from fines by the militia law separate from all other moneys, and keep separate books to enter the same for the purposes hereinafter mentioned.

[Section XXIV.] (Section XXIX, P. L.) And be it enacted by the authority aforesaid, That whenever it may be necessary to call into actual service any part of the militia, in case of a rebellion or invasion of this or any of the adjoining states, then it shall and may be lawful for the president or vice-president in council to order into actual service such part of the militia, by classes, of the city of Philadelphia or any of the county or counties as the exigency may require: Provided, That the part so called doth not exceed four classes of the militia of the county or counties so called out: And provided also, That such counties shall not be again called upon to furnish any more militia until an equal number of classes of the militia of the other counties respectively be first called, unless the danger of an invasion from Indians or others should make it necessary to keep in reserve the militia of such county or counties for their own immediate defense.

(Section XXX, P. L.) And to the end that the militia, when called by classes, shall be properly officered, the following order is hereby directed and enjoined, That is to say:

For the first draft, the captain of the first company, the lieutenant of the second and the ensign of the fourth.

Second draft, the captain of the second company, the lieutenant of the first and the ensign of the third.

Third draft, the captain of the third company, the lieutenant of the fourth and the ensign of the second.

Fourth draft, the fourth captain, the lieutenant of the third company and the ensign of the first.

Fifth draft, the fifth captain, the lieutenant of the sixth company and the ensign of the eighth.

Sixth draft, the sixth captain, the lieutenant of the fifth company and the ensign of the seventh.

Seventh draft, the captain of the seventh company, the lieutenant of the eighth and the ensign of the sixth.

Eighth draft, the captain of the eighth company, the lieutenant of the seventh and the ensign of the fifth.

Non-commissioned officers to take tour of duty with the commissioned officers.

And the field officers of battalions in the city of Philadelphia and in each county of this state shall be divided in like manner, and each class to be considered as a detachment from different corps liable to serve two months and no longer, and to be relieved by the class next in numerical order, the relief to arrive at least two days before the expiration of the term of the class to be relieved, but nothing herein contained shall prevent the supreme executive council from employing or calling out part of any class or any company or companies, battalion or battalions without respect to this rule whenever the exigency is too sudden to allow the assembling of the scattered militia which compose the particular classes and the service of the persons so called out, shall be accounted as part of their tour of duty and the militia in actual service shall receive the same pay and rations as continental troops, their pay to commence two days before marching, and receive pay and rations at the rate of fifteen miles per day on their return home.

(Section XXXI, P. L.) And whereas the militia, when called into actual service, are not entitled to any bounty, such as clothing at the public expense and, therefore, their reward is not equal to that of the regular troops:

[Section XXV.] (Section XXXII, P. L.) Be it therefore en-



acted by the authority aforesaid, That when the militia, or any detachment thereof, are called out on duty each non-commissioned officer and private shall receive such a sum as, including the continental pay, will amount to the price of common labor for the time of service given, to be drawn from the treasury by the paymasters of the militia from time to time appointed; and the officers, whose duty it may be are hereby required to make out separate pay rolls of the said bounty and that all commissioned officers shall, over and above the pay established from time [to time] by the honorable Congress, receive the same bounty which a private shall receive.

[Section XXVI.] (Section XXXIII, P. L.) And be it further enacted by the authority aforesaid, That at each quarter sessions of the peace of the city and in the several counties throughout the state the price of common labor then current in the said city and counties respectively shall be inquired into and ascertained, and the justices, or a majority of them, attending the said courts are hereby required to fix and determine what is the average price of common labor at that time by the day, which price so determined by the said justices shall be considered as a rate by which all fines shall be determined for neglects or omissions of militia duty during and from that time to the end of the next quarter sessions of the peace, and the said justices are hereby required to make out a certificate of the price so determined for the lieutenants of the said city and counties respectively under their hands and seals.

[Section XXVII.] (Section XXXIV, P. L.) And be it further enacted by the authority aforesaid, That when any class or classes of the militia shall be called to perform any tour of duty, the lieutenant or sub-lieutenants shall cause each and every person so called to be notified of such call at least three days before the time of assembling the said militia by a written or printed notice being delivered to him personally or left at his house or usual place of abode by some officer or other fit person employed for that purpose by the commanding officer of said company, and any person refusing or neglecting to perform such tour of duty shall pay, for each and every day he shall so neglect or refuse the price of one day's labor, and in case

he shall be possessed of such estate as is hereinafter mentioned, shall pay such additional sum as by this act is further directed.

[Section XXVIII.] (Section XXXV, P. L.) And be it further enacted by the authority aforesaid, That the master or mistress of any apprentice and the father or mother of any minor liable to serve in the militia who shall refuse or neglect to attend as aforesaid, such minor being in the service of his father or mother, master or mistress, they shall be respectively accountable for the fine or fines so incurred by such minor or apprentice.

[Section XXIX.] (Section XXXVI, P. L.) And be it further enacted by the authority aforesaid, That no mariner or seaman shall be subject to the fines and penalties of this act for not performing militia duties if such mariner or seaman is in actual employ by being shipped for a voyage or absent at sea.

[Section XXX.] (Section XXXVII, P. L.) And be it further enacted by the authority aforesaid, That the militia of this state whilst in the actual service of the United States shall be subject to the same rules and regulations as the federal army: Provided, That upon any transgression or offense of a militiaman, whether officer or private, against the rules and regulations of the federal army the cause shall be tried and determined by a court martial of the militia of this state, and that it shall be in the power of the president of the supreme executive council, or in case of his absence, of the commanding officer of the militia to mitigate, suspend or pardon any punishment to which any militiaman may be sentenced by a general court-martial.

[Section XXXI.] (Section XXXVIII, P. L.) And be it further enacted by the authority aforesaid, That if any delinquent shall neglect or refuse to pay the fine for an omission of performing his tour of militia duty, within five days after the appeal [hereinafter mentioned] it shall and may be lawful for the lieutenant or any sub-lieutenant to issue his warrant to the sheriff, or any constable or other fit person that he can procure, to levy the said fine, by distress and sale of the offender's goods and chattels, lands and tenements, together with

seven and a half per centum and the charges of keeping the distress, in full for his trouble for levying, selling and collecting; which said distress and sale shall be made according to the directions of the law for levying and selling goods and chattels distrained for rent; but if no such goods and chattels, lands and tenements can be found, then to seize and take the body of such offender and commit him to the common gaol or some other place of close confinement for the space of four months, unless he sooner pays the said fine, and no process shall issue to stay the execution of such warrant unless in case of the seizure of real estates.

(Section XXXIX, P. L.) Provided always, That if any person shall think himself aggrieved in the seizure of his lands and tenements he may enter an appeal before the justices to the next court of common pleas for said county, and on the party giving sufficient security within six days next after any lands and tenements shall be seized or distrained as aforesaid to prosecute such appeal with effect, the justices shall receive the same and stay further process, and the said justices shall return every such appeal on the first day of the next term, and the court shall direct a trial by a jury of the country as in cases of debt, whose verdict shall be final and conclusive; and, except in extraordinary cases, of which the court shall judge, all such appeals shall be tried at the term to which such returns shall be made.

(Section XL, P. L.) Provided also, That in case real estate be sold as aforesaid, such sale shall be made by the sheriff of the county, who shall make a sufficient deed for the same and put the purchaser into possession thereof.

[Section XXXII.] (Section XLI, P. L.) And be it further enacted by the authority aforesaid, That no militiaman shall withdraw himself from the company to which he belongs under the penalty of the value of twenty days' labor, to be sued for and recovered by the commanding officer of the company from which he shall so withdraw himself before any justice of the peace by action of debt: Provided nevertheless, That persons removing out of the bounds of one battalion or company to another, shall apply to the commanding officer of the company



to which he did belong who shall give him a discharge, certifying the class to which he belongs, and whether he hath served his tour of duty or not, which certificate the said militiaman shall produce to the captain or commanding officer of the company in whose bounds he next settles within ten days after his settlement under penalty of the value of thirty days' labor to be recovered and applied as aforesaid; and the captain or commanding officer is hereby required to enroll him in the class specified in the said certificate.

[Section XXXIII.] (Section XLII, P. L.) And be it enacted by the authority aforesaid, That in all cases of doubt respecting the age of any person enrolled or intended to be enrolled in the militia, the party questioned shall prove his age to the satisfaction of the officers of the company within the bounds of which he may reside, or a majority of them.

(Section XLIII, P. L.) And whereas it is just and reasonable that those who have considerable property should pay for the protection of that property when they do not give their service in facing danger in the field or bearing any of the necessary fatigues attending a military life; and to compel all persons to give their personal service or some equivalent therefore in some proportion to such property:

[Section XXXIV.] (Section XLIV, P. L.) Be it therefore enacted by the authority aforesaid, That all and every person and persons who are in and by this act required to perform a tour of duty, and have an estate shall pay for neglecting to perform the said tour of duty, in addition to the fine of the price of one day's labor as aforesaid the sum of fifteen shillings in every hundred pounds on all his rateable property and occupation in the manner directed to be ascertained by an act of assembly passed the third day of April, one thousand seven hundred and seventy-nine, entitled "An act to raise the supplies for the year one thousand seven hundred and seventy-nine,"<sup>1</sup> and as may be directed to be taken by every yearly or other state tax in future.

(Section XLV, P. L.) And in order that the lieutenant of each county may have the amount of the whole estate of each person

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<sup>1</sup> Chapter 840.

residing in said county, although the said estate or estates may be situate in some other county or counties, that he, the said lieutenant, may be able, where the case requires it, to levy for the interest on the whole wheresoever lying within this state:

[Section XXXV.] (Section XLVI, P. L.) Be it further enacted by the authority aforesaid, That the assessors of each and every county finding any kind of taxable estate within said county belonging to persons resident in some other county within the state shall and are hereby required to make out a list of the amount of the valuation of such estate or estates, placing the same opposite the name of such proprietor, and once in every year send such lists to the lieutenant of the county where the owner of such estate may reside.

[Section XXXVI.] (Section XLVII, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant of the city of Philadelphia and of the several counties of this state shall have and receive the value of one and an half bushels of wheat per day, and the sub-lieutenants for the said city and counties shall have and receive the value of one and a quarter bushels of wheat per day each, as the same shall be declared from time to time by the general assembly, for their trouble, and for every day in which they shall be employed in doing and performing the respective duties required by this act, which said sum or sums shall be respectively paid unto them out of the fines incurred by this act.

[Section XXXVII.] (Section XLVIII, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for any person called to do a tour of militia duty to find a sufficient substitute, having been previously classed at least six months in the company or battalion to which the person belongs who hires such substitute: Provided always, That persons serving by substitute as aforesaid, if said substitute shall be called in his own turn into actual service before the term expires which he was to serve for his employer, that then the person procuring such substitute shall march in the said substitute's turn or be liable to pay his fine for neglect, which fine is to be recovered as other fines for neglect of serving are by this act directed to be recovered and that sons who

are not subject to the militia law may be admitted as substitutes for their fathers, and that each substitute be approved of by the lieutenant or sub-lieutenant.

[Section XXXVIII.] (Section XLIX, P. L.) And be it further enacted by the authority aforesaid, That the lieutenant or one of the sub-lieutenants shall, within ten and not less than five days after the marching of any part of the militia, call to his assistance two freeholders, one of whom shall be a justice of the peace, to sit at the most convenient place for the inhabitants of their respective districts (notice having been given of such place in the written or printed summons of every militiaman), and shall there hear and determine all appeals that may be made by the persons thinking themselves aggrieved by anything done in pursuance of this act, and they are hereby authorized and required to grant such relief to such appellant as to them shall appear just and reasonable in consideration of such inability of body as in the opinion of the court renders him incapable of performing military duty, and each of the said freeholders, before they shall sit on the said appeal, shall take the following oath or affirmation, viz.: "That he will hear and impartially determine on the cases of appeal that may be laid before him agreeable to law and according to the best of his knowledge," which oath or affirmation the said justice, lieutenant or sub-lieutenant is hereby empowered and required to administer, and the said justice and freeholder shall have and receive from the said lieutenant the value of one bushel of wheat each for every day they sit on the said appeals, and the said lieutenant and justice of the peace shall each keep a separate record of the proceedings of such court of appeals.

[Section XXXIX.] (Section L, P. L.) And be it further enacted by the authority aforesaid, That if any person or persons shall knowingly sell, buy, take or exchange, conceal or otherwise receive any arms, accoutrements, colors or drums belonging to this state or the United States on any account or pretense whatsoever, the person so offending, being convicted thereof before one or more justice or justices of the peace of the city or county where such offense shall be committed, shall forfeit and pay for every such offense treble the value of such arms



or accoutrements, to be ascertained by the said justice or justices and levied by distress and sale of the offender's goods and chattels by the justice or justices before whom such offender shall be convicted, returning the overplus, if any, on demand, to such offender, and for want of such distress shall commit such offender to the common gaol of the county, there to remain without bail or mainprise for any term not exceeding three months, unless such money shall be sooner paid; and in every case the proof of the property shall be made by the possessor of such arms or accoutrements.

[Section XL.] (Section LI, P. L.) And be it further enacted by the authority aforesaid, That no person, not being a subject of this state or any of the United States, who already has deserted or shall hereafter desert from the enemy in the course of the present war, shall be enrolled in any company of militia of this state during the present contest or be subject to any fine or penalty for not serving as by this act is required of others.

[Section XLI.] (Section LII, P. L.) And be it enacted by the authority aforesaid, That no civil process shall be served on any commissioned, non-commissioned officer or private at any regimental review or training of any company, or while going to or returning from the place of such review or training.

[Section XLII.] (Section LIII, P. L.) And be it enacted by the authority aforesaid, That all moneys passing into the treasury by virtue of the directions of this act shall be appropriated as a fund for the benefit and relief of such officers and privates of the militia of this state as are or shall be wounded and disabled in service, and of the widows and children of such as have or shall fall in battle or otherwise lose their lives in the service of the state, and shall not be considered as a revenue for any other purpose than that of supporting the necessary officers for carrying this law into effect, equipping and furnishing the militia with every necessary apparatus for the defense and security of the state, the surplus, if any, to be appropriated in such manner and to such uses as the assembly shall from time to time direct and appoint.

[Section XLIII.] (Section LIV, P. L.) And be it further en-

acted by the authority aforesaid, That if any commissioned officer, non-commissioned officer or private militiaman of this state who has lost or may hereafter lose a limb in any engagement in the service of the state, or in the service of the United States of America, or be so disabled as to render him incapable of getting a livelihood, he shall receive during life or the continuance of such disability a pension adequate to the necessity of such disabled officer or private militiaman by the judgment of the orphans' court of the county where such disabled officer or private militiaman shall dwell or reside. And every officer or private disabled as aforesaid shall, before he be legally entitled to the pension above mentioned, produce a certificate, upon oath, from the commanding officer who was in the same engagement in which he was wounded, or from the officer next in command, or the surgeon that attended him, and upon such disabled officer, non-commissioned officer or private militiaman's producing such certificate as aforesaid to the orphans' court of the county where such disabled officer, non-commissioned officer or private militiaman shall dwell or reside, the said court is hereby enjoined and required, if they are satisfied of the truth thereof, to give every such officer or private an order on the lieutenant of the said city or county for such sums of money from time to time as to them shall appear just and necessary, provided such sums of money do not exceed the half pay and rations of such officer or private. And the said lieutenant is hereby enjoined and required to accept and pay the said order to such officer or private. And the said lieutenant shall draw on the state treasurer as often as he shall have occasion for such sum or sums of money as he shall make appear to the president and council to be necessary for carrying this proviso into execution.

[Section XLIV.] (Section LV, P. L.) And be it enacted by the authority aforesaid, That if any officer, non-commissioned officer or private militiaman residing in this state, having a family, has been killed, shall be killed or shall die of his wounds received in the service of this or the United States, a certificate from the commanding or other officer next in rank who was in the same engagement in which he was killed or wounded and

died of his wounds, being produced to the orphans' court, and also a certificate from the overseers of the poor and two other reputable freeholders of the township, borough, ward or district where the family of such deceased officer or private militiaman shall dwell or reside at that time, setting forth the particular circumstances of such family, the age or ages of the child or children and the necessity of granting them some support, the said orphans' court, when possessed of the certificates aforesaid, is hereby authorized to give orders upon the lieutenant of the city or county for such sum of money as they may think just and necessary for the support of such family from time to time.

(Section LVI, P. L.) Provided always, That the sum of money aforesaid does not exceed the half pay and rations that such officer, non-commissioned officer or private was entitled to at the time of his death.

[Section XLV.] (Section LVII, P. L.) And be it further enacted by the authority aforesaid, That if any field or other commissioned officer, at any regimental review or on any other occasion when the battalion or company to which he may belong, or in which he holds a command is paraded in arms, shall appear, misbehave or demean himself in an unofficerlike manner, he shall, for such offense, be cashiered or punished by fine at the discretion of a general court martial as the case may require in any sum not exceeding the price of six days' labor; and if any non-commissioned officer or private shall, on any occasion of parading the company to which he belongs, appear with his arms and accoutrements in an unfit condition, or be found drunk or shall disobey orders or use any reproachful or abusive language to his officers, or any of them, or shall quarrel himself or promote any quarrel among his fellow soldiers he shall be disarmed and put under guard by order of the commanding officer present until the company is dismissed, and shall be fined in any sum not exceeding the price of ten days' labor nor less than one day's labor.

[Section XLVI.] (Section LVIII, P. L.) And be it further enacted by the authority aforesaid, That if the lieutenant-colonel or commanding officer of any battalion shall neglect



or refuse to give orders for assembling his battalion at the times appointed by this law or at the direction of the lieutenant or sub-lieutenant of the city or any county when the said lieutenant or sub-lieutenant is thereto commanded by the president or vice-president in council, or in case of an invasion of the city or county to which such battalion belongs, he shall be cashiered and punished by fine at the discretion of a general court-martial; and if a commissioned officer of any company shall, on any occasion neglect or refuse to give orders for assembling the company to which he belongs, or any part thereof, at the direction of the lieutenant-colonel or commanding officer of the battalion to which such company belongs he shall be cashiered and punished by fine at the discretion of a regimental court-martial and a non-commissioned officer offending in such case shall be fined in any sum not exceeding the price of ten days' labor.

[Section XLVII.] (Section LIX, P. L.) And be it further enacted by the authority aforesaid, That if any captain or commanding officer of a company shall refuse or neglect to make out a list of the persons noticed to perform any tour of duty and send or convey the same to the lieutenant-colonel or commanding officer of the battalion to which such company may belong for such neglect or refusal he shall be cashiered or fined at the discretion of a regimental court-martial.

[Section XLVIII.] (Section LX, P. L.) And be it further enacted by the authority aforesaid, That the following rules and regulations shall be those by which the militia shall be governed.

1st. Every general court-martial shall consist of thirteen members, all of whom shall be commissioned officers and of such rank as the case may require, and these thirteen shall choose a president out of their number, who shall be a field officer.

2d. Every regimental court-martial shall be composed of five members, all commissioned officers, who are to choose one of their members as president not under the rank of a captain.

3d. In any court-martial not less than two-thirds of the members must agree in every sentence for inflicting any punishment, otherwise the person charged shall be acquitted.

4th. The president of each and every court-martial, whether general or regimental, shall require all witnesses in order to the trial of offenders to declare on oath or affirmation that the evidence they shall give is the truth, the whole truth and nothing but the truth, and the members of all such courts shall take an oath or affirmation, which the president is required to administer to the other members and the next in rank is required to administer to him that they will give judgment with impartiality.

5th. All members of any militia called as witnesses in any case before a court-martial who shall refuse to attend and give evidence shall be censured or fined at the discretion of the court.

6th. No officer or private man being charged with transgressing these rules shall be suffered to do duty in the battalion, company or troop to which he belongs until he has had his trial by a court-martial, and every person so charged shall be tried as soon as a court-martial can be conveniently assembled.

7th. If any officer or private man shall think himself injured by his lieutenant-colonel or the commanding officer of the battalion and shall, upon due application made to him, be refused redress, he may complain to the lieutenant of the county, who shall summon a general court-martial that justice may [be] done.

8th. If an inferior officer or private man shall think himself injured by his captain or other superior officer in the battalion, troop or company to which he belongs, he may complain to the commanding officer of the battalion who shall summon a regimental court-martial for the doing justice according to the nature of the case.

9th. No penalty shall be inflicted at the discretion of the court-martial other than degrading, cashiering or fining.

10th. The commanding officer of the militia for the time being shall have full power of pardoning or mitigating any censures or penalties ordered to be inflicted on any private or non-commissioned officer for the breach of any of these articles by a general court-martial, and every offender convicted as

aforesaid by any regimental court-martial, may be pardoned, or have the penalty mitigated by the lieutenant-colonel or commanding officer of the battalion, excepting only where such censures or penalties are directed as satisfaction for injuries received by one officer or private man from another, but in case of officers such sentence to be approved by the commander-in-chief or the nearest general officer of the militia, who are respectively empowered to pardon or mitigate such sentence or disapprove the same.

11th. The militia, on the days of exercise, may be detained under arms on duty in the field any time not exceeding six hours, provided they are not kept above three hours under arms at any one time without allowing them a proper time to refresh themselves.

12th. No company or battalion shall meet at a tavern on any of the days of exercise, nor shall march to any tavern before they are discharged; and any person who shall bring any kind of spiritous liquor to such place of training shall forfeit such liquors so brought for the use of the poor belonging to the township where such offender lives.

13th. All fines that shall be incurred by any breach of these rules shall be paid into the hands of the clerk of the company to which the offenders belong, but if a field officer, to the clerk of that company whose captain has the first rank in the battalion, within three weeks after they become due; but in case of neglect or refusal to pay any of the said fines, then in such case, upon application made by the clerk to whom such fine or fines ought to have been paid, it shall and may be lawful for any one justice of the peace of the county, if the fine does not exceed fifty pounds, or two justices if above that sum, by warrant under his or their hands and seals to levy such fine or fines respectively on the offender's goods and chattels, and otherwise proceed in recovering the same as is by law directed, and when recovered the said justice or justices are required to pay such fines into the hands of the clerk who applied for recovery and shall be applied as other fines before directed.

[Section XLIX.] (Section LXI, P. L.) And be it further enacted by the authority aforesaid, That in any case wherein any



person is by this act called to do or perform anything in execution thereof, or otherwise, and no special recompense is herein provided for such service, such person shall be satisfied for the same at the discretion of the lieutenant, taking to his assistance two sub-lieutenants of the city or county respectively.

[Section L.] (Section LXII, P. L.) And be it further enacted by the authority aforesaid, That in any case wherein the person who shall be authorized to collect any fine due by virtue of this act shall need assistance in levying the same, such collector, on application to any captain or inferior officer of the militia of the place where such fine shall be due, shall be assisted therein by a sufficient party of militia of the neighborhood ordered on such duty by such captain or other officer, and if such captain or other officer or any of the party by such captain or other officer ordered on such duty refuse or neglect to perform the said duty, such captain or other officer shall forfeit and pay the sum of fifty pounds, and if any non-commissioned officer or private be delinquent therein he shall forfeit and pay the sum of twenty-five pounds, to be recovered with costs of suit as demands for fifty pounds are by law recoverable, to be applied as other fines levied by virtue of this act.

[Section LI.] (Section LXIII, P. L.) And be it further enacted by the authority aforesaid, That in case any militiaman shall desert when he is out on a tour of duty the commanding officer of the battalion or detachment from which he deserts shall, as soon as possible, give notice thereof to the lieutenant of the city or county or sub-lieutenant of the district from which he came who, if he does not see proper to send him back shall subject him to the payment of such fine as he would have paid if he had not gone out on such tour.

[Section LII.] (Section LXIV, P. L.) And be it further enacted by the authority aforesaid, That if any suit or suits shall be brought or commenced against any person or persons for anything done in pursuance of this act, the action shall be laid in the county where the causes of such action did arise and not elsewhere, and the defendant or defendants in such action or actions to be brought may plead the general issue, and

give this act and the special matter in evidence; and if the jury shall find for the defendants in such action or actions, or if the plaintiff or plaintiffs shall be non-suited or discontinue his or their action or actions after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs the defendant or defendants shall have treble costs and have the like remedy for the same as any defendant or defendants had or have in other cases to recover costs by law.

[Section LIII.] (Section LXV, P. L.) And be it further enacted by the authority aforesaid, That all and every the fines and forfeitures by this act made payable and the mode of recovery not hereinbefore particularly pointed out shall be recovered by the lieutenant of each county and of the city of Philadelphia by summons or warrant and execution from under the hand and seal of a justice of the peace in the neighborhood where the person charged resides, directed to any constable of the city or county, requiring him to levy the same on the goods and chattels of the delinquent, and the same cause to be appraised by two freeholders, and after being publicly advertised seven days make sale thereof, and after payment of the fine or forfeiture to the lieutenant, together with costs and charges, pay the overplus, if any, to the owner, and if goods and chattels sufficient to discharge the same cannot be found, that then the justice granting such precept shall certify the proceedings had thereon to the prothonotary of the county court of common pleas, who is thereupon required to issue a fieri facias directed to the sheriff of said county for levying the fines and forfeitures aforesaid, together with the costs on the lands or tenements of such delinquent.

[Section LIV.] (Section LXVI, P. L.) Provided always, and be it enacted by the authority aforesaid, That if any person or persons shall think him or themselves aggrieved by the judgment of the justice aforesaid in any suit of fifty pounds or upwards, he or they may appeal before the justice aforesaid, and on the party's giving security within six days next after any such judgment to prosecute such appeal in the court of

common pleas of the county with effect, the justice shall receive the same and stay further process, and the said justice shall return every such appeal on the first day of the next term, and the court shall direct a trial by jury, as in other cases of debt, whose verdict shall be final and conclusive; and all such appeals shall be tried at the term to which such returns shall be made, any law, custom or usage to the contrary notwithstanding.

[Section LV.] (Section LXVII, P. L.) And be it further enacted and declared, That the act entitled "An act to regulate the militia of the commonwealth of Pennsylvania,"<sup>1</sup> passed on the seventeenth day of March, Anno Domini one thousand seven hundred and seventy-seven; also, the supplement to the said act passed the nineteenth day of June, Anno Domini one thousand seven hundred and seventy-seven;<sup>2</sup> also, a further supplement to the said act passed on the thirtieth day of December, Anno Domini one thousand seven hundred and seventy-three;<sup>3</sup> also, a further supplement to the said act passed on the fifth day of April, Anno Domini one thousand seven hundred and seventy-nine;<sup>4</sup> also, such parts of an act, entitled "An act to empower the supreme executive council and justices of the supreme court to apprehend suspected persons and to increase the fine to which persons are liable for neglecting to do their tour of militia duty,"<sup>5</sup> as relates to the fining the militia for not performing a tour of duty and the pay of the lieutenants are hereby repealed and made void.

[Section LVI.] (Section LXVIII, P. L.) Provided always, That nothing in this act contained shall be deemed to repeal, alter or dispense with the powers, authorities or duties of the present lieutenants and sub-lieutenants of the city and counties aforesaid, or of any other officer or person under the militia laws that have been in force in this state immediately before the passing of this act until their respective offices are supplied and filled by new appointments in virtue of this act which

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<sup>1</sup> Chapter 750.

<sup>2</sup> Chapter 760.

<sup>3</sup> Chapter 781.

<sup>4</sup> Chapter 843.

<sup>5</sup> Chapter 865.



said present lieutenants and sub-lieutenants or other proper officers are hereby authorized required and enjoined to collect or cause to be collected all [such] fines and forfeitures as have been or shall be incurred during the continuance of their respective commissions and pay in the same agreeable to this law, or the late laws aforesaid on or before the first day of July next. But in case the president or vice-president and council shall approve of the discontinuing to act or resignation of the said present lieutenants and sub-lieutenants or any of them and not otherwise it shall be lawful for such officer and he is hereby required to deliver to his successor in office an account on oath of all the moneys uncollected and outstanding on account of fines and forfeitures aforesaid, who is in such case empowered and required to collect the same.

Passed March 20, 1780. See the Acts of Assembly passed May 26, 1780, Chapter 908; September 22, 1780, Chapter 916; March 21, 1783, Chapter 1022; September 22, 1783, Chapter 1038; December 9, 1783, Chapter 1061; September 29, 1787, Chapter 1319; March 22, 1788, Chapter 1339; November 19, 1788, Chapter 1383; March 27, 1789; Chapter 1416; March 3, 1790, Chapter 1483; March 27, 1790, Chapter 1493; April 5, 1790, Chapter 1513 (repealed by the Act of Assembly passed) April 11, 1793, Chapter 1696. Recorded L. B. No. 1, p. 374, &c.

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## CHAPTER CMIII.

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AN ACT TO DISCONTINUE A ROAD CALLED PALMER'S LANE IN THE TOWNSHIP OF THE NORTHERN LIBERTIES IN THE COUNTY OF PHILADELPHIA AND NEAR TO THE LOWER FALLS OF SCHUYLKILL.

(Section I, P. L.) Whereas it has been represented to us on the petition of John Redman of the city of Philadelphia, practitioner in physic, and Nathaniel Falconer, of the same place, mariner, that in the year one thousand seven hundred and twenty-three, four, a road was laid out from the market place in Germantown, in the county of Philadelphia, to Robert Roberts' ferry, on the river Schuylkill, which entered the lands then owned by William Palmer, and since by the said John Redman and Nathaniel Falconer, at the northwest end of the same, and



# L A W S

ENACTED IN THE  
THIRD SITTING  
OF THE FOURTH  
GENERAL ASSEMBLY,  
OF THE COMMONWEALTH OF  
PENNSYLVANIA.

Which Commenced at Philadelphia, on Wednesday the Tenth Day of May, One thousand seven hundred and eighty.

C H A P. CLXXIII.

1780.

*An ACT for the greater ease of the Militia, and the more speedy and effectual defence of this State.*

SECTION I. **W**HEREAS it hath been found by experience, that frequent calls of the Militia hath proved very inconvenient to the good people of this State, and especially in seed time and harvest, when their utmost exertion is requisite for the cultivating of their lands and gathering in the produce thereof; For remedy whereof, and that a body of men may be raised and equipped for the defence of this State,

Preamble.

SECT. 2. *Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the Commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That each and every company of Militia within this State, shall, on or before the fifteenth day of June next, provide or hire one able bodied man not less than eighteen, or more than forty-five years of age, to be formed into a corps for the above purpose; which shall be known and distinguished by the name of the Pennsylvania Volunteers.

Each company of Militia to provide one man.

SECT. 3. *Provided always,* That no deserter from the British army, or from the army or navy of the United States, or any waggoner actually engaged for any time in the service of the said States, shall be enlisted or shall pass muster in the said corps of which requisites and exceptions, the Lieutenant or Sub-Lieutenant of the city, county or district, for which such Volunteer shall be procured, shall be Judge.

Proviso.

SECT. 4. And that the terms and continuance of enlistment may be fully known and understood, *Be it further enacted by the authority aforesaid,* That  
A every

Terms of

1780.

Inlistment  
and oath.

every person engaged in said service, shall sign an inlistment in the following terms, viz. "I, A. B. having engaged to serve as a Pennsylvania Volunteer for the company of the battalion of Militia, of the county of in the State of Pennsylvania, do hereby engage to be true and faithful in the said service, until the fifteenth day of January next, unless sooner discharged, and to be obedient to the authority of said State and my superior officers, according to the rules and discipline of war, and the establishment of the corps in which I am now entered;" which said inlistment, signed by two witnesses, shall be transmitted by the Captain or commanding officer of such company, to the Lieutenant or Sub-Lieutenant within whose jurisdiction such company may be within two days next thereafter, who, within three days after the receipt thereof, shall transmit a certified copy of such inlistment to the commanding officer of that part of the said corps raised within his jurisdiction; and shall also transmit therewith an order to said officer, to rendezvous his men so inlisted with all possible expedition, at a certain day and place, that they may pass muster and proceed on service.

Persons neglecting or refusing to contribute their proportionable share to have the same levied on them.

SECT. 5. *And be it further enacted by the authority aforesaid,* That if any taxable person enrolled in any company of Militia within this State, or any other taxable inhabitant residing within the limits of the said company, shall neglect or refuse to pay into the hands of the commanding officer of the company, a proportionable share of the sum necessary to hire and procure such Volunteer, then the Lieutenant of said company, and two Freeholders chosen for that purpose, by a majority of the same, shall assess and levy a proportionable part of said sum, on such person or persons so refusing, having due regard to the ability of each person as well officer as private. And the Lieutenant or Sub-Lieutenant of the city or county, where such person or persons may reside, shall issue his warrant, and cause the same to be levied as the Militia fines and penalties are levied and collected.

Companies neglecting how proceeded with.

SECT. 6. *And be it further enacted by the authority aforesaid,* That if any company of Militia of this State, shall neglect or refuse to furnish such Volunteer, the Captain or commanding officer thereof, shall, and he is hereby authorized and required, to hire or furnish a Volunteer as above for such company, and with the assistance of two Freeholders, assess and levy the hire of such Volunteer, with the expence and charges of levying and collecting the same, on all taxable inhabitants residing within the limits of said company; and in case the Captain or commanding officer of any such company, refuse or neglect so to do, or if any company should be without such officer, then the Lieutenant or Sub-Lieutenant where the same shall happen, shall with all convenient speed, hire or procure such Volunteer and annex him to his respective corps, and shall charge the whole expence of procuring such Volunteer on said company; and shall cause the same to be levied and collected as other fines and penalties are directed to be, by the Militia Law of this State.

How armed and commissioned.

SECT. 7. *And be it further enacted by the authority aforesaid,* That the President or Vice-President in Council, is hereby authorized and empowered to organize and form the said Volunteers into one or more regiments or corps, as in his discretion he shall think necessary, and arm and equip them with the public arms of this State, and appoint and commission such and so many officers from each county, as such establishment may require; which said officers, non-commissioned officers and privates, shall receive the same pay and rations as the troops for the time aforesaid shall receive in the Federal Army.

SECT. 8. *And be it further enacted by the authority aforesaid,* That the several Captains or commanding officers of the companies of Militia, shall notify



fy their respective companies, to meet on or before the fifteenth day of June next, to carry the said Act as far as it concerns them, into execution, and every person neglecting or refusing, shall be liable to the same fines and penalties, as is directed for non attendance on muster days by the Militia Law of this State.

1780.

SECT. 9. *And be it further enacted by the authority aforesaid,* That if any person so engaging as a Volunteer, and being required by the Lieutenant or Sub-Lieutenant of the city or of any county of this State, to march to the place of rendezvous, shall neglect or refuse so to do, or shall withdraw himself or desert from the said service, or sell or embezzle the arms or accoutrements, or any part of them provided for him as aforesaid, such Volunteer shall be subject to such punishments as are inflicted for the like offences in the Federal army; the trial to be had as is directed by the Militia Law of this State.

Punishment  
on Volunteers  
neglecting to  
muster &c.

SECT. 10. *And be it further enacted by the authority aforesaid,* That if any Lieutenant or Sub-Lieutenant of the city or any county of this State, shall neglect or refuse to do the duties of him or them herein required, they shall be fined for every such offence at the discretion of the President or Vice-President in Council: And if any Captain or Lieutenant or commanding officer of any company, or any person appointed to assess or collect the charge of hire of any of the said Volunteers, neglect or refuse to do the duties required of them according to the directions of this Act, they shall be fined by the Lieutenant or Sub-Lieutenant of the city or county where the offence shall happen, as Collectors of the Public State Tax are or may be, on neglect or refusal to do the duties of them required.

Penalty on  
officers.

SECT. 11. *And be it further enacted by the authority aforesaid,* That the President or Vice-President in Council, is hereby authorized to issue such orders to the Commissioners of Purchase, or other person in any county of this State, as may be necessary for the proper subsistence of said troops while continued in service.

Troops how  
subsisted.

SECT. 12. *And be it further enacted by the authority aforesaid,* That all persons engaged in this corps of Pennsylvania Volunteers, shall be exempted from being charged with, or paying any State or other tax, levied during the time of their service as above.

Volunteers  
exempted  
from tax.

SECT. 13. *Provided always,* That nothing herein contained shall be construed or understood to prevent the reduction or discharge of the said Volunteers, by the President or Vice-President in Council, at any time before the expiration of the term of enlistment.

Provide.

SECT. 14. WHEREAS since the third reading of this Act, fresh information of the increasing dangers and distresses which the inhabitants of the frontier counties are exposed to, from the incursions of the Indians, has been laid before this Assembly, from which there is reason to conclude, that one man to be raised from each company of Militia, as provided for in the former part of this Act, will not be sufficient to answer the good purposes expected therefrom; therefore,

Preamble.

SECT. 15. *Be it further enacted by the authority aforesaid,* That one other Volunteer be hired by each company of Militia within this State, in addition to the one already directed to be raised, at the time and place, and in the manner as is herein before directed; and that all and every part of this Act shall be construed to extend to the said additional Volunteers, as fully as if this Act had

An additional  
man to be  
hired.

1780. had above directed that each and every company of the Militia within this State should provide or hire two able-bodied men.

J O H N B A Y A R D, Speaker.

*Enacted into a Law at Philadelphia, on Friday  
the twenty-sixth day of May, in the year of our  
Lord One thousand seven hundred and eighty.*

T H O M A S P A I N E, Clerk of the General Assembly.

## C H A P. CLXXIV.

*A SUPPLEMENT to an Act intituled, " An Act to compel the Settlement of the Public Accounts," and for other purposes therein mentioned.*

Preamble,

SECTION 1. **W**HEREAS by an Act intituled, " An Act to compel the settlement of the public accounts," passed on the first day of March last, it is enacted, " That in any case wherein it shall appear that a balance of monies shall be due by any person or persons to this Commonwealth, the said Auditors or any two of them, shall direct that payment thereof be made to the Treasurer of this State ; and the certificates of the said Auditors or any two of them, shall be conclusive evidence in an action of debt at the suit of the Commonwealth, against any person or persons of the sums of money which such person or persons owe, or may be indebted to the Commonwealth, and no set off or deduction from the same, shall be admitted ;" by which manner of recovering such ballance of monies due to this Commonwealth, great delays may be occasioned : Therefore,

Persons indebted to the Commonwealth, and neglecting payment, how proceeded with.

SECT. 2. *Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the Commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That where a balance of monies shall be due by any person or persons to this Commonwealth, the Auditors appointed by the above-mentioned Act, or any two of them, shall grant execution thereupon directed to the Sheriff of the city or county, where the defendant, or person from whom a balance of such monies shall be due to this State shall be or reside, or where such person or persons, lands or tenements shall lie, commanding the said Sheriff to levy the said debt or balance due and costs on the defendant's goods and chattels lands and tenements, who by virtue thereof shall expose the same to sale by public vendue ; returning the overplus, if any, to the defendant ; and for want of such sufficient distress, to take the body of the said defendant, and him safely to keep in the common goal of the city or county where such defendant shall be found, until the said sum of money with costs be paid.

SECT. 3. **A**ND WHEREAS the fines imposed by law on delinquent Collectors of public taxes have been found to be insufficient, and the Collectors of fines incurred by the non-performance of Militia duties, are not subject to any penalty for neglects or omissions : Therefore,

SECT. 4.

penalty of twenty per centum for the sum so neglected to be paid, to be recovered in an action brought for the same. Provided always, That persons legally authorized shall appear and make demand thereof agreeable to the mode prescribed by the act to which this is a supplement.

[Section VIII.] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That in case any vessels, goods, wares or merchandise so as aforesaid sold by the marshal shall not be paid for by the purchaser within three days after the sale thereof, that then the said marshal shall or may again expose such vessels, goods, wares or merchandise to public auction for the account of the captors, and having disposed of them for money, shall and may recover against the first purchaser all loss whatsoever which may arise on such second sale, together with costs, damages and charges, in any court of common pleas within this commonwealth.

[Section IX.] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That all other parts of the act of assembly before recited, and to which this is a supplement, not hereby altered or supplied, shall remain, continue and be in full force and virtue.

Passed September 22, 1780. See the note to the Act of Assembly passed March 8, 1780, Chapter 887, and the Act of Assembly passed March 28, 1787, Chapter 1281. Recorded L. B. No. 1, p. 399, &c.

See in general

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## CHAPTER CMXVI.

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A SUPPLEMENT TO THE ACT ENTITLED "AN ACT FOR THE REGULATION OF THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA."<sup>1</sup>

(Section I, P. L.) Whereas, the mode of determining the bounty of the militia while in actual service by the justices of the several courts of quarter sessions, as directed by the act above mentioned, has been found on experience inconvenient

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<sup>1</sup> Passed March 20, 1780, Chapter 902.



and unequal, inasmuch as persons rendering the same services, bearing equal hardships and exposed to equal danger are partially and unequally compensated, thereby creating discontents and distinctions prejudicial to this important and necessary service:

For remedy whereof:

[Section I.] (Section II, P. L.) Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That the average price of common labor by the day in the city of Philadelphia and counties of this state, respectively, shall be inquired into, ascertained and fixed by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, which price so fixed and determined shall be the rate by which all fines and penalties for neglect of militia duty and the bounty of the militia shall be estimated and determined, during and from that time to the end of the next sitting of general assembly, and so from time to time at every succeeding session.

(Section III, P. L.) Provided always, That this act or anything herein contained shall not be construed to alter, mitigate or discharge any fine or penalty already accrued or which may hereafter accrue before the said rate shall be determined and fixed by the general assembly as aforesaid, but that all and singular the powers and authority of the quarter sessions as given by the said act shall continue until the said rate shall be fixed by the general assembly, and no longer.

(Section IV, P. L.) And whereas sundry former lieutenants and sub-lieutenants who have acted under the late militia law have refused or neglected to deliver up the duplicates, books and papers belonging to their offices, whereby the fines and penalties accrued for former delinquencies still remain uncollected to the great discouragement of those who have rendered their personal service in time of danger and to the injury of the public:

For remedy whereof:

[Section II.] (Section V, P. L.) Be it enacted by the authority aforesaid, That if any persons who may have acted in

the office of lieutenant or sub-lieutenant of the city of Philadelphia or any of the counties of this state shall, upon the resignation of his office, or being legally superceded therein, refuse to deliver [up] to his successor in office or to any person who is or shall be appointed by the president or vice-president in council to receive the same, all and singular the books, duplicates, returns or other papers belonging to or [in use] in the said office, demand being first made thereof in writing, he or they so offending shall forfeit the sum of ten thousand pounds and the necessary costs of prosecution for every such refusal, to be recovered by his said successor in office or other person duly authorized as aforesaid upon indictment, bill, plaint or information or by action of debt in any court of record within this state, to be applied as other militia fines are directed by the law to which this is a supplement, and in case of a second refusal such person shall suffer as well the said penalty as the further punishment of six months' imprisonment without bail or mainprise, and the justices of the court where such penalty shall be recovered shall order the said commitment accordingly.

[Section III.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That so much and such parts of the law to which this is a supplement as are by this act altered and amended be and are hereby repealed and declared null and void.

Passed September 22, 1780. See the note to the Act of Assembly passed March 20, 1780, Chapter 902. The Act in the text was repealed by the Act of Assembly passed March 21, 1783, Chapter 1022. Recorded L. B. No. 1, p. 401, &c.

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## CHAPTER CMXVII.

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AN ACT TO REVIVE AND CONTINUE FOR A FURTHER LIMITED TIME  
THE ACT FOR LAYING AN EMBARGO ON THE EXPORTATION OF  
PROVISIONS FROM THIS STATE BY SEA, FOR A LIMITED TIME.

(Section I, P. L.) Whereas, an act, entitled "An act for laying  
an embargo on the exportation of provisions from this state,

the manner hereinbefore described, pursuant to a vote or votes of the members of the said society, appropriating the same at one of their quarterly meetings.

Passed September 20, 1781. Recorded L. B. No. 1, p. 452, etc.

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See also original  
pp. 362, 363

## CHAPTER CML.

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### AN ACT TO MAKE MORE EFFECTUAL PROVISION FOR THE DEFENSE OF THIS STATE.

(Section I, P. L.) Whereas the intelligence received of the preparations made by the enemy at New York indicate an invasion of the state, against which it is our duty to make every provision of defense which the circumstances of this commonwealth admit, and that the executive authority of the state be furnished with sufficient powers to draw forth the resources thereof with the utmost vigor and dispatch:

[Section I.] (Section II, P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That the president (or vice-president) in council be and is hereby authorized to call forth such and so many wagons as shall appear to them necessary for the transportation of the necessary baggage and stores of such troops, either continental or militia; as may be called forth into actual service on this emergency, or for the transportation of the records, books and papers, or other public property, either of the United States or of this state.

[Section II.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That the late wagon-masters of the several counties in this state, and their deputies (or such other persons as shall be appointed by the supreme executive council) and the constables be empowered and are hereby required to do the several duties in the premises which were enjoined by the former wagon laws of this state, and that the

579. Pa.—*General Assembly, Philadelphia; Statutes, Mitchell and Flanders, Vol. X, 1904; Act, Sept. 28, 1781, pp. 361–364, Ch. CML.*



owners of all such wagons be entitled to receive the sum of twenty-five shillings specie per diem for a wagon and four horses with suitable gears, and the sum of fifteen shillings specie per diem for a wagon and two horses with gears as aforesaid, they, the said owners, finding the driver and necessary forage for their respective teams.

[Section III.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That in case a sufficient number of wagons cannot be procured in the manner above mentioned, the president or vice-president in council be and hereby is authorized and empowered to direct his warrant, under his hand and seal, to such persons in the city or any county in this state as shall be deemed proper, authorizing such persons to seize and impress any wagons, horses and gears, boats, sloops or shallops for the transportation of the several articles above mentioned, and in the meantime to detain all wagons, horses, boats or other vessels which any persons may endeavor to remove.

[Section IV.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the president or vice-president in council be and hereby is in like manner authorized and empowered to seize and impress arms, ammuniton and military stores and provisions and forage of all kinds whatsoever, belonging to any private person or companies, and apply them, if need be, to the public use, such seizure to be certified and the value thereof [ascertained] as nearly as possible in specie.

[Section V.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the president or vice-president in council be in like manner authorized and empowered to billet and quarter such troops as may be called together for the special defense of the state, in this emergency, upon any public houses, or in case of their insufficiency upon private houses, having due respect to the number and convenience of families.

(Section VII, P. L.) And whereas, the usual mode of calling out the militia by classes may be attended with fatal delay to the interests and property of the good people of this state:

[Section VI.] (Section VIII, P. L.) Be it therefore further enacted by the authority aforesaid, That the president or

vice-president in council be and is hereby authorized and empowered (if the designs of the enemy shall, in their judgment, make it necessary) to call forth the whole of the militia without any respect to classes, and in that case every person now serving on a tour of militia duty shall repair to [and] join his own proper battalion, orders being first received therefor, and shall be allowed for the service already done.

[Section VII.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That if any person or persons called forth by the president or vice-president in council in manner aforesaid, shall refuse or neglect to perform a tour of militia duty, the person or persons so neglecting or refusing shall be subject to the same fines and penalties as in other cases when called forth in classes, by virtue of the law for regulating the militia of this state, anything in the said law to the contrary thereof notwithstanding.

[Section VIII.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That the president or vice-president in council be authorized to draw upon the treasury for such money as may be necessary in the present emergency for repairing and procuring arms and ammunition and for other contingent expenses attending the present service.

[Section IX.] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That the president or vice-president in council be authorized and empowered, when occasion shall require, to impress by warrant, under hand and seal, such and so many horses and wagons, with suitable gears, as he may judge necessary for the removal of the families and property of those inhabitants of the city of Philadelphia and the Northern Liberties and the district of Southwark, who may be in actual service against the enemy, and of such other citizens and persons who, in his opinion, may be entitled to and require the same, the hire of all such wagons and horses to be paid by the persons making use thereof: Provided nevertheless, That if any horses or wagons shall be impressed by virtue hereof and no use made thereof by the citizens [or persons] for whom they may be impressed, the expense thereof shall be paid by the state treasurer, upon the order of the president or vice-president in council.

[Section X.] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That this act shall be and remain in force until ten days after the meeting of the next general assembly of this commonwealth, and no longer.

Passed September 28, 1781. Recorded L. B. No. 1, p. 455, etc.

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## CHAPTER CMLI.

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AN ACT TO ALTER AND SUPPLY AN ACT ENTITLED "AN ACT FOR RECRUITING THE PENNSYLVANIA LINE IN THE ARMY OF THE UNITED STATES." <sup>1</sup>

(Section I, P. L.) Whereas a number of the classes have not procured recruits according to the directions of the act, entitled "An act for recruiting the Pennsylvania line in the army of the United States," <sup>1</sup> which this act is intended to alter and supply, passed on the twenty-fifth day of June, one thousand seven hundred and eighty-one:

(Section II, P. L.) And whereas, it is absolutely necessary that money be procured from the delinquent classes and that the recruiting of the said line be carried on to effect in the most expeditious manner:

Therefore:

[Section I.] (Section III, P. L.) Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That the commissioners of the several counties within this state proceed, without delay, to levy the sum of twenty pounds specie on each of the delinquent classes within the city and the several counties, and cause the same to be collected and paid into the treasury of each county in the manner and under the pains and penalties directed in and by the act, entitled "An act to raise effective supplies for the year one thousand seven hundred and eighty-one." <sup>2</sup>

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<sup>1</sup> Passed June 25, 1781, Chapter 946.

<sup>2</sup> Passed June 21, 1781, Chapter 944.



make a full and true return of the several quantities of land in the district or township, granted to, or surveyed for any person, the number of buildings thereon, distinguishing dwelling houses from other buildings, and the number of its inhabitants, distinguishing white from black, and the said commissioners shall cause the said returns to be transmitted to the general assembly of this state on or before the first day of November next ensuing the date hereof.

Passed March 21, 1783. Recorded L. B. No. 2, p. 79, etc. See the Acts of Assembly passed September 25, 1783, Chapter 1052; April 5, 1785, Chapter 1161; March 8, 1786, Chapter 1209.

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See in general

## CHAPTER MXXII.

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A FURTHER SUPPLEMENT TO THE ACT, ENTITLED "AN ACT FOR THE REGULATION OF THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA,"<sup>1</sup> AND TO REPEAL THE ACT, ENTITLED "A SUPPLEMENT TO THE ACT FOR THE REGULATION OF THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA."<sup>2</sup>

(Section I, P. L.) Whereas it is conceived that the act of general assembly entitled "An act for the regulation of the militia of the commonwealth of Pennsylvania," passed the twentieth day of March, in the year of our Lord one thousand seven hundred and eighty,<sup>1</sup> may be improved, by the abolition of the office of sub-lieutenants of the city and counties, by appropriating the fines, and ascertaining the pay of the militia, and by altering the days of mustering and other alterations herein-after mentioned:

[Section I.] (Section 11, P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That from and after the first day of April next the office of sub-lieutenant of the city of Philadelphia and the several counties of this state shall be and the same is

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<sup>1</sup> Passed March 20, 1780, Chapter 902.

<sup>2</sup> Passed September 22, 1780, Chapter 916.

hereby vacated and abolished, and the lieutenants of the said city and counties respectively shall do, exercise and perform, all and singular the duties, matters and things required by the act aforesaid to be done and performed by the sub-lieutenants, excepting as is hereinafter directed.

[Section II.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That the lieutenants of the city and counties aforesaid shall each of them have and receive the sum of twelve shillings and six pence and no more for every day they shall be actually employed in doing and performing the respective duties required by this act and the act to which this is a supplement.

[Section III.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That if any person or persons do think him or themselves aggrieved by anything done in pursuance of the act of assembly aforesaid in order that he or they may have their grievances redressed, the lieutenants of the city of Philadelphia and of the several counties shall forthwith after the marching of the militia proceed to superintend the appeals from day to day, Saturdays and Sundays only excepted, and the lieutenant shall transmit his orders, specifying the time and place of meeting of the several appeals to the lieutenant-colonel of commanding officers of each battalion within this jurisdiction, without delay, who shall forthwith send the same, by the adjutant of such battalion, or by some other fit person, to the several captains or commanding officers of companies within the district thereof, as speedily as may be; and the said captains or commanding officers of companies shall thereupon notify the same to every person enrolled in their several companies in the manner and within the time prescribed by the aforesaid act.

[Section IV.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That hereafter the captain or commanding officer of the company in which a substitute shall serve, shall have the sole and exclusive power of determining on the abilities and fitness of such substitute; and the lieutenant of the city and each county hereafter shall appoint two honest

and skilful freeholders to appraise, on oath or affirmation, the horses and accoutrements of persons serving as light horse.

[Section V.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the several and respective officers, who shall hereafter be elected or appointed, agreeable to the aforesaid act, shall serve respectively as officers of the militia for and during the term of three years; and in case of death, resignation or cashiering by a court-martial, the vacancy shall be supplied by election in the same manner as the officers were first elected by the aforesaid act, any law, custom or usage to the contrary notwithstanding.

(Section VII, P. L.) Provided always, That any officer cashiered shall not be capable of being re-elected.

[Section VI.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That no person shall be capable of electing officers or to be elected, who has not taken an oath or affirmation of allegiance, according to law, to this or some one of the United States; anything in the act to which this a further supplement to the contrary notwithstanding, young men who have arrived to the age of eighteen years since the time limited by law for taking the oath or affirmation of allegiance as aforesaid, and all such who have mustered or performed a tour of militia duty excepted.

[Section VII.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That the returns hereafter to be made, by the captains or commanding officers of companies, of the delinquents on all days of exercise, together with the fines by them received from any such delinquents, shall be upon oath or affirmation.

[Section VIII.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That from and after the passing of this act the whole of the militia of this state shall be subject to be exercised in companies, under their respective officers, as followeth, that is to say; in the city of Philadelphia and districts annexed, in companies, on the two last Mondays in the month of April; and the first battalion, in battalion, on the first Monday in the month of May; the second battalion on the Tuesday following; the third battalion on the Wednesday; and so



on, according to their numerical rank, on every day of the week Saturday and Sunday excepted until the whole number of battalions shall have mustered in the aforesaid manner; and in autumn or fall season of the year, shall meet to exercise in companies, the two first Mondays in the month of September; and the first battalion, in battalion, on the third Monday of the said month; the second battalion on the Tuesday following; the third battalion on the Wednesday; and in this manner until the whole number of battalions have mustered, except as before excepted, and in each and every county in the following manner, that is to say; in companies, the two last Mondays in the month of April; and in battalion, in the following manner, to wit: The first battalion shall meet, in battalion, on the first Monday in the month of May; the second battalion on the Tuesday following; the third battalion on the Wednesday; and so on, according to the days of the week (Saturday and Sunday excepted) until the whole number of battalions belonging to each county shall have mustered in this manner, and in companies, the first and second Mondays in the month of October; and the first battalion, in battalion, on the next succeeding Monday; the second battalion on the Tuesday following; the third on the Wednesday, and in this manner until the whole number of battalions belonging to each county, according to their ranks, severally shall have mustered on any day it may happen, except as before is excepted; and the militia shall be and is hereby indemnified and excused from mustering on any other days than those enumerated in this act.

[Section IX.] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That if any commissioned officer shall neglect or refuse to attend on any of the days appointed for exercise in company as aforesaid (unless prevented by sicknesses, or some other unavoidable accident) such commissioned officer shall forfeit and pay the sum of ten shillings, and any non-commissioned officer or private, and all enrolled persons so refusing or neglecting (except as before excepted) shall forfeit and pay the sum of five shillings, and upon a battalion day, a field officer who shall neglect or refuse to attend shall forfeit and pay the sum of forty shillings, and every other officer, non-

commissioned officer or private and all enrolled persons, refusing to meet and exercise on battalion days, shall forfeit and pay double the fines or forfeitures they may incur for non-attendance on company days, as aforesaid, except as before excepted.

[Section X.] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That the fines incurred by any person for non-attendance on muster-days, from and after the first day of April next, shall be, and they are hereby appropriated for the purchasing of arms and accoutrements for such persons enrolled in the militia of the city and counties respectively as shall be unable to purchase for themselves; and that the arms and accoutrements so purchased, from time to time, be distributed by the lieutenants equally amongst the several battalions, the commanding officers whereof shall cause the same to be deposited in some suitable place or places within the district of such battalion, for the use aforesaid, and shall be responsible to the lieutenants for their safe keeping.

[Section XI.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That if any persons, who may have acted in the office of lieutenant or sub-lieutenant of the city of Philadelphia or any of the counties of this state, shall, upon the resignation of his office or being legally superseded therein, refuse to deliver up to his successor in office or to any person who is or shall be appointed by the president or vice-president in council to receive the same, all and singular the books, duplicates, returns or other papers belonging to or in use in the said office (demand being made thereof in writing) he or they, so offending, shall forfeit the sum of five hundred pounds and the necessary costs of prosecution, for every such refusal, to be recovered by his said successor in office, or other person duly authorized as aforesaid, upon indictment, bill, plaint or information, or by action of debt, in any court of record within this state, to be applied as other militia fines are directed by the law, to which this is a supplement; and in case of a second refusal, such person shall suffer as well the said penalty, as the further punishment of six months imprisonment without bail or

mainprize; and the justices of the court where such penalty shall be recovered shall order the said commitment accordingly.

[Section XIII.] (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That the commanding officers of the respective battalions shall attend at the place of rendezvous of the marching class or classes, and the commanding officers of the marching class or classes are hereby required then and there to deliver to the commanding officer of the battalion, a muster roll of all those who attend and proceed to perform their then required tour of duty under the penalty of fifty pounds; which return or muster roll shall be transmitted by the said commanding officer of the battalion within five days after marching, under the penalty of one hundred pounds, to the lieutenant of the city or county to which they belong; and the said lieutenant shall, after the appeals are ended, without delay, make out fair duplicates in writing of the fines incurred in each battalion, and shall deliver the same to the respective collectors of the supply taxes for the time being in each township, ward or district, who are hereby authorized and enjoined to levy and receive from each and every person the sum annexed to his name; and the said collectors shall be entitled to the like reward as the sheriff heretofore by virtue of the aforesaid act; and the moneys so collected shall be paid by the respective collectors to the treasurer of the county within which they inhabit, under the penalty of five hundred pounds, and by him to the treasurer of the state, to be by him kept apart, as a fund towards paying the militia, to which purpose the same is hereby appropriated, and to no other use whatsoever; but the militia of any county shall not be entitled to draw on the state treasury for more money, than has been paid into the same by the treasurer of the county to which the militia applying belong, until the fines arising from the delinquency of such county shall be paid into the state treasury as aforesaid.

[Section XIII.] (Section XV, P. L.) And be it further enacted by the authority aforesaid, That when the militia or any detachment thereof are called out on duty, each officer, non-commissioned officer and private shall receive pay equal to the pay allowed to officers, non-commissioned officers and privates in the



continental army, and no more; and that every person refusing or neglecting to perform his tour of duty shall pay ten pounds ten shillings for every such neglect or refusal.

(Section XVI, P. L.) And whereas it is just and reasonable that those who have considerable property should pay for the protection of that property when they do not give their service in facing danger in the field or bearing any of the necessary fatigues attending a military life, and to compel all persons to give their personal service or some equivalent therefor in some proportion to such property:

[Section XIV.] (Section XVII, P. L.) Be it therefore enacted by the authority aforesaid, That all and every person and persons who are in and by the act, to which this is a supplement required to perform a tour of duty, and have an estate, shall pay for neglecting to perform the said tour of duty, in addition to the sum fixed as aforesaid, a sum equal to one-fifth part of the amount of the sum he is rated and to pay on all his rateable property and occupation in the manner directed to be ascertained by the act for raising supplies for the year one thousand seven hundred and eighty-three, and as may be directed to be taken by every yearly or other state tax in future.

(Section XVIII, P. L.) Provided always, That the forty-third and forty-fourth sections of the act to which this a supplement, be, and the same are hereby repealed and made void.

[Section XV.] (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That so much of the act for regulating the militia of this commonwealth as is herein altered and amended, be and the same is hereby repealed; and also that the act, entitled "A supplement to the act entitled 'An act for the regulation of the militia of the commonwealth of Pennsylvania,'"<sup>1</sup> passed on the twenty-second day of September, which was in the year of our Lord one thousand seven hundred and eighty, is hereby repealed, made null and void.

Passed March 21, 1783. Recorded L. B. No. 2, p. 87, etc. Repealed by the Acts of Assembly passed December 9, 1783, Chapter 1061; March 22, 1788, Chapter 1339; April 11, 1793, Chapter 1696.

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<sup>1</sup> Passed September 22, 1780, Chapter 916.

## CHAPTER MXXXVIII.

AN ADDITIONAL SUPPLEMENT TO AN ACT, ENTITLED "AN ACT FOR THE REGULATION OF THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA." <sup>1</sup>

(Section I, P. L.) Whereas by the present militia laws of this state the militia cannot be assembled in less than three days after notice given: And whereas the peace and good order of government may be interrupted by sudden and dangerous tumults and riots, for the suppression of which the immediate aid of the militia may be expedient and necessary.

[Section I.] (Section II, P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That from and after the publication of this act it shall and may be lawful for the supreme executive council and they are hereby empowered when it may be necessary and expedient for the support of the civil authority in preserving peace and good order within this commonwealth to order into immediate and actual service the whole or such part of the militia of the city of Philadelphia or of any county or counties as the exigency of the case may require.

[Section II.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That the several and respective officers and privates of the militia so called up or ordered as aforesaid shall be liable to the same fines and penalties for refusing or neglecting to perform the service required of them by this act as by the law to which this is a supplement they are or may be liable to for neglecting or refusing to perform a tour of duty.

Passed September 22, 1783. Recorded L. B. No. 2, p. 160, etc.

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<sup>1</sup> Passed March 20, 1780, Chapter 902.

See all original  
pages hereof

Cited in

50 Pa. 169

59 Pa. 121

107 Mass. 168

3 Cyc. 839

8 Cyc. 853

8 Cyc. 878

19 Cyc. 25

40 Cyc. 329

268 Pa. 103

245 U. S. 388

62 L. E. 357

f. 243 F. 435

243 F. 675

246 F. 58

253 F. 236

106 S. C. 53

16 F. 203

36 F. S. 84

15 T. L. Q. 472

120 A. L. R. 1173N

Henry S. Kneedler *versus* David M. Lane, Charles B. Barrett, J. Ralston Wells, and Isaac Ashmead, Jr.

Francis B. Smith *versus* David M. Lane, Charles B. Barrett, J. Ralston Wells, and Christian Young.

William Francis Nickels *versus* William E. Lehman, N. N. Marsellis, Charles Murphy, and Ebenezer Scanlan.

The constitutionality of the United States Conscription Law of March 3d 1863, considered and discussed by the judges of the Supreme Court at Nisi Prius, and decided by a majority of the court to be within the constitutional powers vested in Congress. Liability of state and federal officers to suit in state court for acting to the injury of a citizen without constitutional authority. Constitutional power of Congress to "raise armies," discussed. Liability of drafted citizen to rules and articles of war. Validity of injunction to restrain commission of personal tort, doubted. Practice on motion to discharge preliminary injunction.

IN the Supreme Court of Pennsylvania. In Equity.

These were proceedings founded on three bills in equity, filed in the Supreme Court for the Eastern District, by the complainants above named, for themselves and others who might legally become parties thereto, against the above-named respondents, who were the officers of the Enrolling Board of the Fourth Congressional District of Pennsylvania, under the Act of Congress entitled "An Act for enrolling and calling out the national forces, and for other purposes," approved March 3d 1863.

Two of the complainants, William F. Nickels and Henry S. Kneedler, being under the age of thirty-five years, were within the first class of enrolment and draft, as provided by the act. Francis B. Smith, the other complainant, who was over the age of thirty-five years and married, was within the second class of enrolment and draft.

In other respects the cases were alike, and depended on the same principles.

The bills severally set forth the age and residence of complainants; the passage and approval of the Act of Congress above mentioned, and its provisions; the erection of the Fourth Congressional District into a military district for the purposes of the

580. Pa.—*Kneedler v. Lane*, 45 Pa. St. Rep. (Vol. 9; R. Wright, 1864) p. 238; Decision dated Nov. 9, 1863 on constitutionality of Act, Mar. 3, 1863, pp. 238, 244, 258, 278-280, 285, 286, 288, 289.



[*Kneedler et al. v. Lane et al.*]

selves, and it seems to me they did not intend to grant such a power to the federal government.

Besides this, the constitution does authorize forced levies of the militia force of the states in its organized form, in cases of rebellion and invasion, and, on the principle that a remedy expressly provided for a given case, excludes all implied ones, it is fair to infer that it does not authorize forced levies in any other case or mode. The mode of increasing the military force for the suppression of rebellion being given in the constitution, every other mode would seem to be excluded.

But even it be admitted that the regular army may be recruited by forced levies, it does not seem to me that the constitutionality of this act is decided. The question would then take the narrower form—Is this mode of coercion constitutional?

It seems to me that it is so essentially incompatible with the provisions of the constitution relative to the militia that it cannot be. On this subject, as on all others, all powers not delegated are reserved. This power is not expressly delegated, and cannot be impliedly so if incompatible with any reserved or granted power. This is not only the express rule of the constitution, but it is necessarily so; for we can know the extent to which state functions were abated by the federal constitution only by the express or necessarily implied terms of the law or compact in which the abatement is provided for. And this is the rule in regard to the common law; it is changed by statute only so far as the expression of the statute requires it to be.

Now, the militia was a state institution before the adoption of the federal constitution, and it must continue so, except so far as that constitution changes it, that is, by subjecting it, under state officers, to organization and training according to one uniform federal law, and to be called forth to suppress insurrection and repel invasion, when the aid of the federal government is needed, and it needs this force. For this purpose it is a federal force; for all others it is a state force, and it is called in the constitution "the militia of the several states:" Art. 2, 2, 1. It is, therefore, the standing force of the states, as well as in certain specified respects the standing force of the Union. And the right of the states to have it is not only not granted away, but is expressly reserved, and its whole history shows its purpose to be to secure domestic tranquillity, suppress insurrections, and repel invasions. Neither the states nor the Union have any other militia than this.

Now, it seems to me plain that the federal government has no express, and can have no implied power to institute any national force that is inconsistent with this. This force shall continue, says the constitution, and the federal government shall make

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Whiskey Insurrection in this state, they paid the most scrupulous regard to the rights and powers of the state. Under pressure of a foreign war, a conscript bill was reported in Congress in 1814, but it did not pass, and if it had it would have been no precedent for this law, because we are now dealing with an insurrection, and insurrections are specially provided for in the constitution. If to support a foreign war, Congress may draft the militia, which I do not admit, the power of draft to suppress insurrections is not to be implied, since another mode of suppressing insurrections is expressly provided. When a state is called on for its quota of militia it may determine by lot who of the whole number of its enrolled militia shall answer the call, and thus state drafts are quite regular, but a congressional draft *to suppress insurrection*, is an innovation that has no warrant in the history or text of the constitution. Either such a law or the constitution must be set aside. They cannot stand together.

And happily no ill consequences can flow from adhering to the constitution, for the standing army of the federal government, recruited by enlistments in the ordinary mode, with the state militia, called forth according to the constitution, are a force quite sufficient to subdue any rebellion that is capable of being subdued by force of arms. Such a formidable force, wisely wielded, in connection with a paternal and patriotic administration of all other constitutional powers, will never fail to put down refractory malcontents, and preserve peace and good order among the American people. This Conscript Law, therefore, not sanctioned by the constitution, is not adapted to the exigencies of the times, nor likely to have success as a war measure.

In its political bearings, even more than in its military aspects, it is subversive of the constitution, and of the rights of citizens that depend upon state authority. A few thoughts will make this plain.

It is impossible to study our state and federal constitutions, without seeing how manifestly the one was designed to guard and maintain the personal and social rights of the citizen; the other to take care of his external relations. Nurture, education, property, home, wife and children, servants, administration of goods and chattels after death, and a graveyard in which to sleep the sleep of death, these are among the objects of state solicitude, for the protection of which the state provides civil authorities, and back of them the *posse comitatus* and the militia to make the civil administration effectual. Now, if the principle be admitted that Congress may take away the state militia, who does not see that the ultimate and final security of every man's domestic and personal rights is endangered? To the extent delegated in the constitution nobody questions the right of Congress to control the state militia, but

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be? In *Gibbons v. Ogden*, 9 Wheat. 196, the Supreme Court of the United States laid down the principle that all the powers vested by the constitution in Congress are complete in themselves, and may be exercised to their utmost extent, and that there are no limitations upon them, other than such as are prescribed in the constitution.

It is not difficult to ascertain what must have been intended by the founders of the government when they conferred upon Congress the power to "raise armies." At the time when the constitution was formed, and when it was submitted to the people for adoption, the mode of raising armies by coercion, by enrolment, classification, and draft, as well as by voluntary enlistment, was well known, practised in other countries, and familiar to the people of the different states. In 1756, but a short time before the Revolutionary War, a British statute had enacted that all persons without employment might be seized and coerced into the military service of the kingdom. The act may be found at length in *Ruffhead's British Statutes at Large*, vol. 7, p. 625. Another act of a similar character was passed in 1757: *British Statutes at Large*, vol. 8, p. 11. Both were enacted under the administration of William Pitt, afterwards Lord Chatham, reputed to have been one of the staunchest defenders of English liberties. They were founded upon a principle always recognised in the Roman empire, and asserted by all modern civilized governments, that every able-bodied man capable of bearing arms, owes personal military service to the government which protects him. Lord Chatham's acts were harsh and unequal in their operation, much more so than the act of Congress now assailed. They reached only a select portion of the able-bodied men in the community, and they opened wide a door for favouritism and other abuses. For these reasons, they must have been the more prominently before the eyes of the framers of the federal constitution, when they were providing safeguards for liberty and checks to arbitrary power. Yet, in full view of such enactments, they conferred upon Congress an unqualified power to raise armies. And, still more than this, coercion into military service by classification and draft from the able-bodied men of the country was to them a well-known mode of raising armies in the different states which confederated to carry on the Revolutionary War. It was equally well known to the people who ordained and established the constitution, expressly "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, and secure the blessings of liberty for themselves and their posterity." It is an historical fact, that, during the later stages of the war, the armies of the country were raised not alone by voluntary enlistment, but also by coercion, and that the liberties and independ-



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ence sought to be secured by the constitution, were gained by soldiers made such, not by their own voluntary choice, but by compulsory draft. Chief Justice Marshall, himself a soldier of the Revolution, than whom no one was better acquainted with revolutionary history, in his *Life of Washington* (vol. 4, p. 241), when describing the mode in which the armies of the government were raised, makes the following statement: "In general, the Assemblies (of the states) followed the example of Congress, and apportioned on the several counties within the states the quota to be furnished by each. This division of the state was again to be subdivided into classes, and each class was to furnish a man by contributions or taxes imposed on itself. In some instances, a draft was to be used in the last resort." This mode of recruiting the army by draft, in revolutionary times, is also mentioned in *Ramsey's Life of Washington* (vol. 2, p. 246), where it is said: "When voluntary enlistments fell short of the proposed numbers, the deficiencies were, by the laws of several states, to be made up by drafts or lots from the militia." Thus it is manifest that when the members of the convention proposed to confer upon Congress the power to raise armies, in unqualified terms, and when the people of the United States adopted the constitution, they had in full view compulsory draft from the population of the country, as a known and authorized mode of raising them. The memory of the Revolution was then recent. It was universally known that it had been found impossible to raise sufficient armies by voluntary enlistment, and that compulsory draft had been resorted to. If, then, in construing the constitution we are to seek for and be guided by the intention of its authors, there is no room for doubt. Had any limitation upon the mode of raising armies been intended, it must have been expressed. It could not have been left to be gathered from doubtful conjecture. It is incredible that when the power was given in words of the largest signification, it was meant to restrict its exercise to a solitary mode, that of voluntary enlistment, when it was known that enlistments had been tried and found ineffective, and that coercion had been found necessary. The members of the convention were citizens of the several states, each a sovereign, and each having power to raise a military force by draft, a power which more than one of them had exercised. By the constitution, the authority to raise such a force was to be taken from the states partially, and delegated to the new government about to be formed. No state was to be allowed to keep troops in time of peace. The whole power of raising and supporting armies, except in time of war, was to be conferred upon Congress. Necessarily, with it was given the means of carrying it into full effect.

I agree that Congress is not at liberty to employ means for

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the execution of any power delegated to it, that are prohibited by the spirit of the constitution, or that are inconsistent with the reserved rights of the states, or the inalienable rights of a citizen. The means used must be lawful means. But I have not been shown, and I am unable to perceive, that compelling military service in the armies of the United States, not by arbitrary conscription, but, as this act of Congress directs, by enrolment of all the able-bodied citizens of the United States, and persons of foreign birth, who have declared their intention to become citizens, between the ages of twenty and forty-five (with some few exceptions), and by draft by lot from those enrolled, infringes upon any reserved right of the states, or interferes with any constitutional right of a private citizen. If personal service may be compelled,—if it is a common duty, this is certainly the fairest and most equal mode of distributing the public burden.

It was urged, in the argument, that coercion of personal service in the armies is an invasion of the right of civil liberty. The argument was urged in strange forgetfulness of what civil liberty is. In every free government the citizen or subject surrenders a portion of his absolute rights in order that the remainder may be protected and preserved. There can be no government at all where the subject retains unrestrained liberty to act as he pleases, and is under no obligation to the state. That is undoubtedly the best government which imposes the fewest restraints, while it secures ample protection to all under it. But no government has ever existed, none can exist, without a right to the personal military service of all its able-bodied men. The right to civil liberty in this country never included a right to exemption from such service. Before the federal constitution was formed, the citizens of the different states owed it to the governments under which they lived, and it was exacted. The militia systems of the states then asserted it, and they have continued to assert it ever since. They assert it now. No one doubts the power of a state to compel its militia into personal service, and no one has ever contended that such compulsion invades any right of civil liberty. On the contrary, it is conceded that the right to civil liberty is subject to such power in the state governments, and the history of the period immediately antecedent to the adoption of the federal constitution shows that it was then admitted. Is civil liberty now a different thing from what it was when the constitution was formed? It is better protected by the provisions of the constitution, but are the obligations of a citizen to the government any less now than they were then? This cannot be maintained. If, then, coercion into military service was no invasion of the rights of civil liberty en-

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fleets, and to raise the revenues which will be required for the formation and support of an army and navy in the customary and ordinary modes practised in other governments:" Id. p. 151; and "there can be no limitation of that authority which is to provide for the defence and protection of the community in any manner essential to its efficacy, that is, in any manner essential to the formation, direction, or support of the national forces:" Id. p. 150. The necessity of employing a regular force in case of seditions and insurrections, is forcibly portrayed in the 28th number of the Federalist.

( No person is naturally exempted from taking up arms in defence of the state,—the obligation of every member of society being the same. Those alone are excepted who are incapable of handling arms, or supporting the fatigues of war. This is the reason why old men, children, and women are exempted. "The clergy cannot naturally, and as a matter of right, arrogate to themselves any peculiar exemption. To defend one's country is an action not unworthy of the most sacred hands:" Vattel, book 3, ch. 2, § 10, ed. 1760; 2 Burlamaqui, Politic. Law, part 4, ch. 1, § 14, p. 158.

Every citizen is bound to serve and defend the state as far as he is capable; and it would seem that the duty incumbent on every citizen to defend his country, as well from foreign aggression or injury as from intestine disorders, was fully recognised by the common law: Vattel, Id. § 8; Bowyer's Const. Law of England, p. 484.

In the first constitution of Pennsylvania, and in those of several other states, the duty of the citizen to yield his personal service when necessary, or an equivalent thereto, is distinctly asserted. This is the more remarkable in our state, as, owing to the preponderating influence of the Society of Friends, the colony had no efficient militia law, at any time, and in the earlier and later periods of its history none at all. In 1756, the Assembly prepared a new militia bill, by which all the male inhabitants were subjected to military duty, commutable for a fine in the ordinary courts of justice. The officers, however, were still elective, for which reason the governor objected to the bill. He also required that persons alleging conscientious scruples against bearing arms should appear in open court, and declare to what society they belonged; that they were truly and religiously opposed to war; and that a court-martial should be authorized to punish by death or otherwise, as was provided by the English militia bill. But the House, unwilling to strengthen the hands of the executive by giving him the appointment of the officers, and to lodge such powers in courts-martial, refused to remodel their bill: Gordon's Hist. of Penna. 340.

The battle of Lexington having roused the indignation of the



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people, the committee of correspondence of the city and county of Philadelphia to supply the want of a militia law, called a meeting of the citizens, who resolved to form a military association, for the protection of their property, their liberty, and their lives. This association extended through every county of the province, its members furnishing themselves with the necessary arms. The assembly approved the association, and engaged to provide for the pay and sustenance of those called into actual service. The committee of public safety prepared articles for the government of this military association, but the citizens refused to sign them, alleging that many persons, rich and able to perform military duty, claimed exemption under pretence of conscientious scruples. Both parties addressed the Assembly, the committee of correspondence, and of the officers and soldiers of the military association, saying, emphatically, "Be this as it may, self-preservation is the first duty of nature, which every man indispensably owes not only to himself, but to the Supreme Director and Governor of the Universe, who gave him being. In political society, all men, by the original compact, are required to unite in the defence of the community against such as would unlawfully deprive them of their rights, and those who withdraw themselves from this compact are not entitled to the protection of the society. The safety of the people is the supreme law. He who receives an equal benefit should bear an equal burden."

The Assembly imposed a fine on all able-bodied effective male white persons capable of bearing arms, not associators, between the ages of sixteen and fifty years; ministers of the gospel, of all denominations, schoolmasters in actual employ, and servants purchased *bonâ fide*, and for a valuable consideration, only excepted, which fine was largely increased by the first Assembly under the state constitution: 5th April 1776; 14th February 1777, McKean's ed., p. 22.

The Revolutionary Congress was a body entirely dependent on the will of the several states and the good feeling of their citizens; for the Articles of Confederation were not finally ratified by all the states until the 1st March 1781. The Congress assigned the quota of troops to the several states, and they followed the example by apportioning to the several counties the quota to be furnished by each: 4 Marshall's Life of Washington, p. 241. This division of the state was again to be subdivided into classes, and each class was to furnish a man by contribution, or taxes imposed. In some instances a draft was to be used in the last resort. Pennsylvania concentrated the requisite power in the president, Mr. Reed, and authorized him to draw forth the resources of the state, under certain limitations, and if necessary to declare martial law over the state: 2 Ramsay's Life of Washington, p. 246.

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Locke, Vattel, and all the writers on government and the laws of nations, were familiar to the statesmen of the Revolution, and were largely used in their discussions, which from necessity involved the fundamental principles of civil society: Votes of Assembly, 1770 to 1789, p. 3, &c. No one, for instance, can read the second chapter of the third book of Vattel's Law of Nations, without seeing that the clause to raise and support armies, and the consequent power to oblige every able-bodied man to become a soldier, is but an embodied expression of the sound views of this enlightened writer. The very volume I quote from bears the marks of the studies, most probably, of some of the great men who framed the constitution, and to whom the use of the library had been tendered: Vattel, book 3, ch. 2, vol. 2, p. 3, &c., ed. 1760, in Philadelphia Library.

There can therefore be no doubt that the contemporaneous construction of this clause was that adopted by General Knox and approved by President Washington, particularly when we advert to the amendment of Rhode Island, proposed four months afterwards, to confine this compulsory power to cases of general invasion.

In the second war of independence, Mr. Monroe, then secretary of war, with the approbation of Mr. Madison, a framer of the constitution, and one of the authors of the Federalist, proposed a plan to Congress by which the free male population of the United States, between eighteen and forty-five years, be formed into classes of one hundred men—each class to furnish — men for the war, within thirty days after the classification, and replace them in the event of any casualty. If any class failed to provide the men required of it, within the time specified, they should be raised by draft on the whole class, any person thus drafted being allowed to furnish a substitute. This, therefore, was a compulsory draft, and the argument of Mr. Monroe, in favour of the power of Congress, is clear, full, and exhaustive, and never has been answered: 7 Niles's Reg. 137, 17th October 1814; Id. 139.

It was opposed by the peace men of that day, gentlemen who favoured the Hartford Convention, and who were entirely opposed to the general administration, and the further prosecution of the war. Mr. Charles J. Ingersoll supported the measure in a very able speech, and after a lapse of thirty-seven years, his deliberate judgment was in favour of its constitutionality. The war was drawing near to a close, all parties expected peace, and the news of it in February 1815, stopped all further warlike preparations: 3 Annals of 13th Congress 807; Ingersoll's Hist. of Second War, 2d series, vol. 2, ch. 7.

In the state of New York, then strongly in favour of the administration and the vigorous prosecution of the war, at a

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special session of the legislature called by Governor Tompkins, Mr. Van Buren introduced a bill into the Senate to raise twelve thousand men by drafting, and placing them in the service of the United States, which, after being amended, became a law on the 24th of October 1814. It was stigmatized as a conscription bill by the opposition, and in the council of revision, Chancellor Kent reported objections, the first of which was, "Because the Constitution of the United States has granted to Congress the power to raise and support armies, and with it the exclusive power to lay and collect imposts, and the concurrent power to lay and collect taxes, duties, and excises, in order to provide for the common defence and general welfare." These objections were, however, overruled by Governor Tompkins, Chief Justice Thompson, and Spencer and Yates, Justices of the Supreme Court, and the bill became a law: Street's New York Council of Revision 443. The same legislature passed an act to raise a corps of four thousand sea fencibles, and also an act for raising two regiments of men of colour.

Governor Tompkins was an ardent supporter of the war, and a most popular executive, and was rewarded by a grateful people by being twice elected to the high office of Vice-President of the United States.

A bill of a similar character was introduced into the Senate of Pennsylvania, entitled "An act to raise for a limited time a military force," which passed that body by a vote of twenty-one to nine, but was lost in the House. Mr. Nicholas Biddle, then a member of the Senate from Philadelphia, made a very able speech in favour of the bill, and voted for it: Senate Journal, 1814, Lowrie's Rep. p. 49; Id. 75; Id. 135; Aurora, January 21st 1815.

On the 3d March 1863, Congress passed "An act for enrolling and calling out the national forces, and for other purposes," by which all able-bodied male citizens, and persons of foreign birth who shall have declared on oath their intention to become citizens, between the ages of twenty and forty-five years, except as therein excepted, are declared to constitute the national forces, and to be liable to perform military duty in the service of the United States, when called out by the president for that purpose. These forces were divided into two classes. Those who were drawn by lot, after having been regularly enrolled, unless exempted by law, were either to serve as soldiers or to procure substitutes, or to pay \$300. The service is therefore compulsory, or, in the words of the Declaration of Rights to our first constitution, the drafted man must yield his "personal service," or "an equivalent thereto," for Congress has decided it is necessary. I cannot, therefore, doubt that this act of Congress, in the present situation of the country, is a clearly constitutional exercise of power











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